TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 402.

LE ROY BRAZEE, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

FILED SEPTEMBER 18, 1915.

(24,628)

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INDEX.

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1 STATE OF MICHIGAN,
Supreme Court:

RECORD.

STATE OF MICHIGAN:

The Recorder's Court for the City of Detroit.

No. 17375.

THE PEOPLE OF THE STATE OF MICHIGAN
vs.
LEROY BRAZEE, Defendant and Appellant.

Error to the Recorder's Court of the City of Detroit, Mich.

Hon. Wm. F. Connolly, Associate Judge of the Recorder's Court.

A brief statement of the facts in the above entitled cause *are*:
That on the 22d day of August, A. D. 1913, the defendant and appellant executed a bond, with the American Surety Company as surety, in the sum of one thousand ($1,000) dollars, lawful money of the United States of America, to be paid to the said People of the State of Michigan, in order to obtain his license, as is provided by Act 301 of Public Acts of 1913. That after the execution of said bond the State Labor Commissioner, James V. Cunningham, issued to the defendant and appellant a license to conduct a private employment agency in the City of Detroit, as is provided by Act 301 of the Public Acts of 1913. That on the 19th day of November, A. D. 1913, an information was filed in the Recorder's Court be-
2 fore the Hon. William F. Connolly, Associate Recorder of the City of Detroit, entitled The People of the State of Michigan vs. Le Roy Brazee, defendant, case No. 17375, alleging among many other things the violation of the Labor Law, Act 301 of the Public Acts of 1913. That the defendant and appellant by his attorney, made a motion to quash the proceedings and to hold the same for naught, for the reason that Act 301 of the Public Acts of 1913 was invalid and unconstitutional, and that the court had no jurisdiction of the defendant and appellant, for many reasons set forth in the motion. That the court overruled the defendant and appellant's motion to quash, and proceeded to try the case by a jury, and the defendant and appellant was convicted, under and by virtue of said law.

Recorder's Court for the City of Detroit.

No. 17375.

PEOPLE
vs.
LEROY BRAZEE.

Recorder's Court for the City of Detroit.

Hon. William F. Connolly, Recorder's Judge.

May 13, 1914—forenoon.

The defendant, Le Roy Brazee, was tried and convicted in this court upon a charge of violating the employment agency law of the state. Previous to his trial, a motion to quash was made in the proceeding and argued at length by counsel for the opposing sides, which resulted in an order being entered by the court overruling the motion to quash, and directing that the defendant should go to the jury of the county. The defendant, by his attorney, Proctor K. Owens, now moves the court to grant to Le Roy Brazee a new trial, and to quash the information in said cause for a number of reasons, which may be grouped under two heads: No. 1: 3 The validity of the pleadings in the case. No. 2: The validity of the law. I am satisfied from the arguments made upon the motion to quash, and from the hearing of the testimony in the case and the arguments upon the law made at the time of the trial, that the information is sufficient in form to sustain under Act 301 of the Public Acts of 1913. This ruling I make in the general form to cover all the motions for a new trial, or all the reasons urged for a new trial and for quashing the information. I am further satisfied from the arguments of counsel upon the motion to quash and upon the trial that this law, Act No. 301 of the Public Acts of 1913, is a valid and constitutional exercise of the police powers of the state. This ruling is made to cover specific objections in a general way that have been directed against the validity and the constitutionality of the act. I therefore deny the defendant a new trial and dismiss the motion to quash.

Motion to Quash.

STATE OF MICHIGAN:

In the Recorder's Court for the City of Detroit.

THE PEOPLE, Plaintiff,
vs.
LEROY BRAZEE, Defendant.

And now comes the above named defendant, by McHugh, Gallagher, O'Neill & McCann, his attorneys, and respectfully moves

the court to quash the information heretofore filed in the above entitled cause, for the reason that the act under which said
4 information is filed, to-wit, Act 301 of the Public Acts of 1913, is unconstitutional and void in the following particulars and for the following reasons:

First. By the provisions of section one of said act, unequal taxes are imposed upon persons engaged in the business of conducting employment agencies, in that unequal fees are charged of persons in said business in different parts of the State of Michigan.

Second. By the provisions of section one of said act, persons engaged in the business of conducting employment agencies are classified without any proper or legal basis of classification.

Third. By the provisions of section one of said act, the same license fee is exacted of all persons engaged in conducting a private employment agency, regardless of the period of time during which such agency is conducted, and thereby unequal taxes are imposed upon the persons in said business.

Fourth. That by the provisions of section three of said act, an applicant for a license under said act is required to furnish a surety bond, and the surety on such bond is liable for the breach of the contracts of such applicant while conducting an employment agency, such provisions constituting an unjustifiable interference with the right of citizens to carry on a legitimate business.

Fifth. That section five of said act limits the fee that may be charged by any person conducting an employment agency, which provision is a limitation upon the right to contract and is a deprivation of the property without due process of law.

Sixth. Section eight of said act provides that any person conducting an employment agency in violation of any provision of said act shall be deemed guilty of a misdemeanor and be liable to a
5 fine and imprisonment; and thereby any employment agent guilty of any fraudulent promise is liable to be adjudged guilty of such misdemeanor; and thereby one class of citizens guilty of a certain conduct are made subject to a penal statute to which others guilty of the same conduct are not subject. Which provisions constitute class legislation.

Seventh. That by the provisions of sections six and eight of said act, any employment agent who is guilty of any fraudulent disposition is made liable to a fine and imprisonment for a term longer than that to which any other person guilty of the same conduct is liable. Which provisions constitute class legislation.

This motion is based upon the files and records of this court and cause.

Dated December 16th, 1913.

McHUGH, GALLAGHER, O'NEILL & McCANN,
Attorneys for Defendant.

Suite 702 Majestic Building, Detroit, Michigan.

EXHIBIT A.

Private Employment Agency License.

To all to whom these presents shall come, Greeting:

Whereas, Le Roy Brazee, of the City of Detroit, County of Wayne and State of Michigan, has complied with the provisions of Act No. 301 of the Public Acts of 1913, and with the regulations of the Department of Labor adopted in accordance therewith; and has duly made application for a license to conduct a Private Employment Agency under and by virtue of this Act:

And Whereas, Said Le Roy Brazee has paid the sum of one hundred dollars as a license fee therefor;

6 And Whereas, Said Agency is to be conducted at 58 Griswold street in said City of Detroit, County of Wayne and State of Michigan, operating under the name of the Central Employment Agency.

Be It Known, That by reason of the power in me invested by the statutes of the State of Michigan I hereby authorize said Le Roy Brazee to carry on and conduct such Agency at the place above mentioned from and after the date hereof, until and including the 31st day of December, 1913, unless sooner revoked as provided by law.

This license is not transferable.

In Witness Whereof, I have hereunto set my hand and caused my official seal to be affixed this 22nd day of August, A. D. 1913.

[SEAL.] JAS. V. CUNNINGHAM,
Commissioner of Labor.

Information for Violating Labor Law.

The Recorder's Court of the City of Detroit.

STATE OF MICHIGAN,
County of Wayne, City of Detroit:

In the Name of the People of the State of Michigan, Hugh Shepard, prosecuting attorney in and for said County of Wayne, who prosecutes for and on behalf of the People of said State in said court, comes now, here in said court, in the November term thereof, A. D. 1913, and gives the said court to understand and be informed that Leroy Brazee, late of the City of Detroit, in said county,

7 heretofore, to-wit, on the 19th day of November, in A. D. 1913, at the City of Detroit, in the county aforesaid, was then and there operating and maintaining a private employment agency where a fee was charged to persons seeking employment, which said private employment agency was then and there operated and maintained by the said Le Roy Brazee, under the name and style of the Central Employment Agency, located at No. 58 Griswold street, in the said City of Detroit; that on, to-wit, the 19th day of November,

A. D. 1913, said Le Roy Brazee did send one Adolph Lang, who was then and there an applicant for employment, to the said Le Roy Brazee, to a certain employer, to-wit, the Commercial Garage Company, a corporation organized and existing under the laws of the State of Michigan, located at No. 67 Abbott street, in said City of Detroit, which said Commercial Garage Company, corporation and employer as aforesaid, had not then and there, nor at any other time, applied to the said Le Roy Brazee, employment agent as aforesaid, for help or labor, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the People of the State of Michigan.

HUGH SHEPARD,
Prosecuting Attorney.

Motion for New Trial.

In the Recorder's Court for the City of Detroit.

THE PEOPLE, Complainant,
vs.
LEROY BRAZEE, Defendant.

Now comes the above named defendant, Le Roy Brazee, by Proctor K. Owens, his attorney, and respectfully requests the court to grant a new trial in the above entitled cause, so as to enable the defendant to incorporate in the original record the following additional reasons for the invalidity and unconstitutionality of Act 301 of Public Acts of 1913. This motion is based upon the records and files in said cause.

PROCTOR K. OWENS,
Attorney for Defendant.

8 *Motion to Quash Information.*

In the Recorder's Court for the City of Detroit.

THE PEOPLE, Complainant,
vs.
LEROY BRAZEE, Defendant.

Now comes the above named defendant, Le Roy Brazee, by Proctor K. Owens, his attorney, and respectfully moves the court to quash the information filed in the above entitled cause, for the following reasons:

1st. That the information filed in said cause omits to charge that the defendant has failed or refused to pay the required license tax.

2nd. That said Act 301 of the Public Acts of 1913, provides for a license fee which in no manner promotes the health or good morals of the people, and is therefore not a reasonable exercise of the police power.

3rd. That said information does not set forth that it was the duty of the defendant to obtain a license, and also those conditions which would enable him to obtain one if he applied.

4th. That the license fee charged under this law is a tax and under the constitution taxes are to be uniform and levied upon property, and it is therefore unconstitutional to charge or exact a license tax on a lawful business.

5th. That the license tax provided by this act in section one, is not based upon any idea of benefit to the person taxed, and is not uniform, but special legislation, and is therefore unconstitutional.

6th. That said act is violative of the constitution, Article V, Section 21, in that no law shall embrace more than one object which shall be expressed in the title.

7th. That said act is void because in contravention of the constitution in this: That it is not uniform or levied upon any principle of equality or uniformity, and consequently lacks one of the essential elements of lawful taxation, and is therefore class legislation.

8th. That said law is unreasonable, oppressive, prohibitive and not regulative.

9th. That said law vests arbitrary, executive, legislative and judicial power in the State Labor Commissioner to say whether any man may engage in this lawful business.

10th. That this law is partial, special and not general, and therefore is not a law, being discriminatory and class legislation and unconstitutional and void.

11th. That it is not in the power of the legislature to deprive any of the people of the State of Michigan of equal privileges under the law, or to give to the Labor Commissioner any arbitrary or tyrannical power.

12th. That this law is in violation of the fourteenth amendment of the constitution of the United States, and also Article IV, Section 2, of the Federal Constitution, which provides that "Citizens of each State shall be entitled to all privileges and immunities of the citizens of the several States."

13th. That this law is an arbitrary and capricious act, abridging the right to contract and depriving individual citizens of the lawful right to choose *his* lawful vocation and confiscate *his* property without due process of law.

14th. That the legislature has no authority to vest the sole and exclusive power in the Labor Commissioner to judge of the proper cause of rejecting, as well as the fitness of persons to be granted licenses, as is done under this law, which subjects the applicant to the arbitrary powers of the Commissioner and gives him no right whatever.

15th. That said act is violative of Article I, Section 10, of the Federal Constitution, which provides that no state shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contract.

16th. That said act requires excessive bonds and imposes unreason-

able and excessive fines and penalties, which said provisions are in contravention of the State and Federal Constitutions.

17th. That said act is violative of Article V, Section 30, of the State Constitution, which provides: "That the legislature shall pass no local or special act in any case where a general act can be made applicable, and where a general act can be made applicable shall be a judicial question. That no local or special act shall take effect until approved by a majority of electors voting thereon, in the district to be affected."

18th. That the primary purpose of this act is to raise revenue under the guise of the police power of the State, or to subvert the proper exercise of that power to the prohibition by means of oppressive license fees, of the right of the citizen to exercise a lawful calling in violation of the constitutional guarantee against destruction of liberty and property rights of the citizen.

19th. The right to follow any of the common occupations of life, is an inalienable right, and the defendant cannot be deprived of it by the arbitrary power of the legislature.

11 20th. That the right to contract cannot be limited by arbitrary legislation, and if it could be our government would become a despotism in theory if not in fact.

21st. That sections 3, 4, and 6 of said act are unreasonable, arbitrary and abridge the right of the defendant to contract and to legitimately advertise his business under said law.

22nd. That taxation not based upon any idea of benefit to the person taxed is grossly unjust, tyrannical and oppressive, and might well be characterized as public robbery.

23rd. That the business of employment agencies as defined in section one of this act, does not belong to that class of trades or occupations which are so inherently harmful and dangerous to the public, that they may either directly or indirectly be restricted or prohibited.

24th. That the applicant for license under section one of this act, is required to pay the fixed and invariable sums of one hundred dollars for a license, for the unexpired term of the current year; that is, until the first day of January following. If the application is made on the first day of January, the applicant pays only one hundred dollars for a license for a full year, if made July the first, the applicant pays the same amount for six months; if made December 30th, the applicant would still be required to pay one hundred dollars for a license for a single day. That no such arbitrary power is vested in the legislature to make such an unequal charge as is provided in this law, and the same is void and unconstitutional.

25th. That such exorbitant license fees makes this law restrictive and prohibitory, so as to contravvene the fundamental principles of the State and Federal Constitutions, which are intended to

12 protect the citizen in the pursuit of an occupation not inherently dangerous or harmful to the public.

26th. That the business in which this defendant is engaged is not only innocent, but innocuous, and is highly beneficial as tending to more quickly secure labor for the unemployed. There is nothing

in the nature of the business, therefore, that in any way threatens or endangers the public health, safety or morals.

27th. That this statute prescribes a most drastic rule governing the conduct of a citizen in the prosecution of a harmless, legitimate and beneficial business.

28th. That such legislation is entirely arbitrary in its character and restricting the rights, legal privileges or legal capacities of one class of citizens in a manner before unknown to the law.

Respectfully submitted,

PROCTOR K. OWENS,
Attorney for Defendant.

EXHIBIT D.

Central Employment Agency.

58 Griswold Street.

Phone Main 3800 Cherry 350

DETROIT, MICH.....191..

Received of .....
Residence .....
Nationality..... Age..... Sex.....
The sum of.....Dollars, for which I agree to procure a position as .....
or any other position he does accept in Detroit or elsewhere, compensation about..... per..... within.....
10 days from date hereof. If no position is secured, money will be refunded to undersigned applicant, on or after.....10 days from date hereof, on presentation of this contract. It is hereby understood and agreed that the said undersigned shall report to this office each day, between the hours of 8:30 a. m. and 4:30 p. m. until a position is secured.

(Signed) .....

CENTRAL EMPLOYMENT AGENCY,

Per.....

13 EXHIBIT C.

Surety Bond.

Know all men by these presents, that we, Le Roy Brazee, of the City of Detroit, County of Wayne, and State of Michigan, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto the people of the State of Michigan, in the penal sum of One Thousand Dollars, lawful money of the United States of America, to be paid to the said People of the State of Michi-

gan, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed with our hands and sealed with our seals, this the 22nd day of August, A. D. 1913.

Whereas, a license has this day been granted by the Commissioner of Labor of the State of Michigan to the above bounden Leroy Brazee authorizing him to operate and maintain a Private Employment Agency in the City of Detroit, County of Wayne, and State of Michigan, from the date hereof, to and including the thirty-first day of December, A. D. 1913, under and by virtue of the laws of the State of Michigan:

Now, therefore, the condition of this obligation is such, that if the said Le Roy Brazee shall faithfully observe and perform all the provisions of the laws of the State of Michigan, relative to Private Employment Agencies and particularly the provisions of Act No. 301 of the Public Acts of the State of Michigan, of the session of 1913, then this obligation shall be null and void, otherwise to remain in full force and effect.

(Sgd.) LE ROY BRAZEE. [SEAL.]
AMERICAN SURETY COMPANY OF NEW YORK,
[SEAL.] By GEO. I. CLOUTIER,
Resident Vice-President.

Attest:
WM. L. McGIVERIN,
Resident Assistant Secretary.

In Presence of
J. C. LOGAN.
M. B. BAKER.

14 *Certificate of Court.*

STATE OF MICHIGAN,
The Recorder's Court for the City of Detroit:

No. 17375.

THE PEOPLE OF THE STATE OF MICHIGAN
vs.
LEROY BRAZEE, Defendant and Appellant.

This cause is now here signed by Hon. William F. Connolly, the Associate Judge of the Recorder's Court for the City of Detroit, before whom said cause was heard, upon pleadings and proofs taken in open court. That at the request of the attorneys for the respective parties that so much of the record in said cause as is herein set forth, shall

constitute the record, the sole question appealed from being the constitutionality of Act 301 of the Public Acts of 1913.

Dated Detroit, Michigan, this 23rd day of July, A. D. 1914.

W. F. CONNOLLY,
Associate Judge of the Recorder's Court.

Stipulation as to Record.

STATE OF MICHIGAN,
The Recorder's Court of the City of Detroit:

No. 17375.

THE PEOPLE OF THE STATE OF MICHIGAN
vs.
LEROY BRAZEE, Defendant and Appellant.

It is hereby stipulated and agreed by and between the attorneys for the respective parties, that the within proceedings shall constitute the record in the above entitled cause, for the purpose of testing the constitutionality of the law, Act 301 of the Public Acts of 1913.

Dated July 10, 1914.

ALLAN H. FRAZER,
Prosecuting Attorney, for Appellee.
PROCTOR K. OWENS,
Attorney for Appellant.

15 At a Session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol in the City of Lansing, on the fifth day of November in the year of our Lord one thousand nine hundred and fourteen.

Present the Honorable Aaron V. McAlvay, Chief Justice; Flavius L. Brooke, Franz C. Kuhn, John W. Stone, Russell C. Ostrander, John E. Bird, Joseph B. Moore, Joseph H. Steere, Associate Justices.

26,316.

THE PEOPLE
vs.
LE ROY BRAZEE.

This cause coming on to be heard is duly submitted on briefs.

16 STATE OF MICHIGAN:

Supreme Court.

Opinion.

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff,
v.
LEROY BRAZEE, Defendant.

Before the Full Bench.

BROOKE, *J.:*

Respondent stands convicted of a violation of the provisions of Act No. 301 of the Public Acts of 1913, relating to the licensing, bonding, and regulation of private employment agencies. The Act provides:

"Section 1. No person, firm or corporation in this State shall open, operate or maintain a private employment agency where a fee is charged to persons seeking employment, without first obtaining a license for the same from the Commissioner of Labor, and the fee for such license shall be $25.00 per annum except in cities over 200,000 population, where it shall be $100.00 per annum. Every license shall be void after the thirty-first day of December of the year in which it was issued. The form of the license shall be fixed by the Commissioner of Labor and it shall be non-transferable. The license may be revoked by the Commissioner of Labor whenever in his judgment, after full hearing, the licensed agency shall have violated any of the provisions of this act. The Commissioner of Labor is hereby charged with the enforcement of the terms of this act and empowered to make such rules or regulations as are consistent with it and aid in its enforcement and he shall direct copies or excerpts of this act to be kept conspicuously posted in every licensed agency. The Commissioner of Labor shall turn into the State treasury all fees collected under this act."

Section 2 provides for a surety bond in the penal sum of $1,000.00.

Section 3 requires the employment agency to keep certain
17 records. Section 4 requires such agency to give receipts for fees paid. Section 5 provides for a limitation upon such fees and for their repayment under certain contingencies. Sections 6 and 7 prohibit certain practices. Section 8 provides for a penalty, which may be either fine or imprisonment.

Respondent avers that said Act is unconstitutional and void, for many reasons which we find it unnecessary to enumerate at large in this opinion. It may be said, generally, that the claim of the respondent is: 1. That the title of the Act is insufficient. 2. That the fee charged is a tax and as such lacks the equality or uniformity demanded by the Constitution. 3. That it is unreasonable, oppressive, prohibitory, and not regulative. 4. That it vests arbitrary, executive, legislative, and judicial power in the State Labor Commissioner to say whether any man may engage in this lawful business. 5. That

it is discriminatory class legislation. Other reasons are urged, which we believe may fairly be considered as covered by those above set forth.

With reference to the first contention, we think it is sufficient to say that in our opinion the title is sufficient and does not offend Section 21 of Article 5 of the Constitution of 1908.

The other reasons urged for holding the Act unconstitutional, with the exception of No. 4, may be treated together.

The police power is said to be a power or organization of a system of regulations tending to the health, order, convenience, and comfort of the people and to the prevention and punishment of in-
18 juries and offenses to the public. It is the expression of an instinct of self-preservation and characteristic of every living creature an inherent faculty and function of life, attributed to all self governing bodies as indispensible to their healthy existence and to the public welfare. It embraces all rules and regulations for the protection of life and the security of property. 28 Cyc. 692; 31 Cyc. 902. It has for its object the improvement of social and economic conditions affecting the community at large and collectively with a view to bring about "the greatest good of the greatest number." Courts have consistently and wisely declined to set any fixed limitations upon subjects calling for the exercise of this power. It is elastic and is exercised from time to time as varying social conditions demand correction.

This Court has had frequent occasion to examine legislative enactments whose validity rests upon a proper exercise of this power. Among these are the following: With respect to meat dealers, Ash v. People, 11 Mich. 347. Regulating the manufacture and sale of bread, People v. Wagner, 86 Mich. 594. Regulating pawn brokers, Grand Rapids v. Braudy, 105 Mich. 670. Hawkers and peddlers, City of Muskegon v. Zeeryp, 134 Mich. 181. Regulating the sale of goods in bulk, Kidd, Dater & Price v. Musselman Grocery Co., 151 Mich. 478. (Affirmed in 217 U. S. 461.)

It is the contention of counsel for respondent that respondent is engaged in a lawful and useful occupation, and that in consequence thereof the legislature was without power to regulate said business as it attempted to do by means of the Act in question. In support of this position the case of People v. Berrien Circuit Judge, 124
19 Mich. 664, is cited. It is there said:

"The legislature of this State is not empowered by the Constitution to regulate contracts between its citizens who are engaged in legitimate commercial business, or to require any class of persons to pay a fee for the right to carry on business, or to give a bond to perform their contracts which other parties may choose to make with them. The Constitution guarantees to citizens the right to engage in lawful business, unhampered by legislative restrictions, where no restrictions are required for the protection of the public."

There can be no doubt of the soundness of the principles enunciated in the foregoing quotation. The point in issue is whether the business carried on by the respondent is one which may properly be

regulated by the legislature through the exercise of the police power, in the interests of the public.

This question was considered by the Supreme Court of the United States in the case of Williams v. Fears, 179 U. S. 270. Mr. Chief Justice Fuller writing the opinion for the Court there says:

"It would seem, moreover, that the business itself is of such nature and importance as to justify the exercise of the police power in its regulation. We are not dealing with single instances, but with a general business and it is easy to see that if that business is not subject to regulation, the citizen may be exposed to misfortunes from which he might otherwise be legitimately protected. Nor does it appear to us that the objection of unlawful discrimination is tenable."

In the case of Price v. People, 193 Ill. 114, the Court had under consideration Section 10 of an Act of the General Assembly entitled in part "For the Regulating of Private Employment Agencies." This Act provided for a license fee of $200.00, and the execution of a bond in the penal sum of $1,000.00. That Court determined that the Act contravened neither the State nor the Federal Constitution. It is there said:

20 "It is an attribute of sovereign power to enact laws for the exercise of such restraint and control over the citizen and his occupation as may be necessary to promote the health, safety and welfare of society. This power is known as the police power. * * *

"That the public welfare demands legislation prescribing regulations and restrictions to protect against the evils of imposition and extortion which have manifested themselves in the conduct of private employment agencies is not controverted by counsel for plaintiff in error."

In that case, as in the case at bar, it was contended that the license fee of $200.00 was an oppressive arbitrary exaction. While affirming the right of the Court to pass upon the reasonableness of the license fee exacted, it was held that where the fee was imposed by an Act of the General Assembly, the Court should proceed with great hesitation and caution in passing upon the validity of the enactment.

The same law, in its entirety, was considered by the Illinois Supreme Court in the case of Matthews v. The People, 202 Ill. 389. The Court there held the entire Act to be unconstitutional, but upon grounds not affecting the question at issue in the instant case.

Counsel for respondent cite and rely upon the case of State v. Moore 113 N. C. 697. The question was again before the Supreme Court of that state in the case of State v. Hunt, 129 N. C. 686, where the holding in the earlier case was distinctly overruled.

In the case of Moore v. City of Minneapolis, 43 Minn. 418, a municipal ordinance enacted in pursuance of legislative authority, which required a license fee in the sum of $150.00, was considered and upheld. In a later case, Moore v. City of St. Paul, 48 Minn. 331, a license fee of $150.00 was held invalid upon the ground that

21 it was not apportionable, that is, the applicant, according to the terms of the regulation, was obliged to pay $150.00 without regard to the time of year at which the application was made, all licenses expiring on the 1st of January.

The infirmity of this provision, if it be conceded to be such, is not found in the Act now under consideration. The provision of Section 1 is that:

"The fee for such license shall be $25.00 per annum, except in cities over 200,000 population, where it shall be $100.00 per annum."

Under this provision we think it clear that the Commissioner has authority to pro rate the fee according to the period covered by the license.

It was contended in the case of People ex Rel. Armstrong v. Warden, etc., 183 N. Y. 223, that an ordinance requiring the payment of a license fee of $25.00 was unconstitutional, as being in conflict with both the State and Federal Constitutions. The Court sustained a conviction under said ordinance on the ground that the character of the business was such as to warrant proper regulation in the exercise of the police power.

In the case of Ex Parte Dickey, 144 Cal. 234, the Supreme Court of that State had under consideration a law limiting the compensation to be received by employment agents, which limitation was practically the same as that provided for in Section 5 of the Act under consideration. It was there held that the regulation was unwarranted and that the business was "not only innocent and innocuous, but highly beneficial, as tending the more quickly to secure labor for the unemployed."

A like result was reached in the case of City of Spokane v. Macho, 51 Wash. 322, the decision going upon the ground that the
22 regulation was not general and impartial in its operation, but preyed upon one class to the exclusion of others in respect to a penal Act common to all classes of business, and exceeded the reasonable limit of police regulation. See also, Shepperd et al. v. County Commissioners of Sumter, 59 Ga. 535; State v. Napier, 63 S. C. 66.

From a careful consideration of all the authorities we have reached the conclusion that the business is one properly subject to police regulation and control. The character of those with whom the business is likely to be conducted, in point of capacity for self protection from fraudulent practices, is such that the legislature might very properly determine that a license system should be adopted, to the end that dishonest and disreputable persons might, in a measure, be excluded from a right to engage in the business and means afforded for the detection of fraud and the redress of wrongs. It seems clear that the character of the business is such as to facilitate the practice of fraud upon the ignorant and credulous.

Nor are we prepared to say that the license fee imposed is excessive. The record contains no evidence tending to show the cost of inspection or enforcement of the terms of the Act. Under the circumstances, we are disposed to the view that the sum charged for the license is within the legislative discretion.

The contention of the respondent that the Act in question violates Article 5, Section 30 of the State Constitution, in that under the guise of a general act, it is really local legislation, is, in our opinion, untenable. It is true that it provides for a license fee of $100.00 in

cities containing over 200,000 population, and but $25.00
23 in other cities, and it is likewise true that at the present time there is but one city in the State of Michigan which has a population of more than 200,000. This fact, however, is not necessarily controlling. The act operates upon all citizens alike, except that a larger sum is charged for the license in larger cities than in smaller ones. Wherever the fee for the license is charged primarily for the purpose of regulation and not for the purpose of revenue, a variable sum may be fixed to meet the varying conditions under which the licensee operates. 25 Cyc. 608, and cases cited in note 74. It may well be that the legislature appreciated the fact that inspection for the purpose of proper regulation in large cities would be much more expensive than such inspection in smaller cities, and that the larger sum was fixed for the purpose of meeting such added expense of administration.

4. There remains for consideration only the question whether the act confers upon the Commissioner of Labor arbitrary powers judicial in their character.

The legislature frequently delegates to Boards or Commissions the right and power to determine certain facts upon which action is based, and this power has frequently been challenged in our own and other courts. It was considered in this state in the case of Feek v. Township Board of Bloomingdale, 82 Mich. 393, where it was determined that the local option law was valid against the objection that it conferred judicial power upon the Board of Supervisors. And again in the case of Sherlock v. Stuart, 96 Mich. 193, where the power to determine the question as to whether an applicant was a suitable party to have a license to conduct a saloon was
24 delegated.

The exact point was determined contrary to the contention of respondent in the case of Kennedy v. State Board of Registration, 145 Mich. 241. The act there under consideration conferred upon the State Board of Registration the right to "revoke the certificate of registration, after due notice and hearing of any registered practicioner who inserts any advertisement in any newspaper, pamphlet, circular, or other written or printed paper, relative to venereal diseases or other matter of any obscene or offensive nature derogatory to good morals." It was there urged that the authority delegated was judicial in character, and therefore unconstitutional. In an exhaustive opinion, supported by many authorities, this Court denied the contention, and held that the power delegated is not judicial in character and that,

"If, through nonobservance of the statute, complainant or any other physician is deprived of a constitutional right, there is nothing therein which prevents his obtaining adequate redress in a court."

It is to be presumed that public officials will perform their duty without prejudice or dishonesty. Their failure to act within the limits of their delegated authority may be reviewed in a proper forum.

In the late case of Michigan Central Railroad Co. v. Michigan

Railroad Commission, 160 Mich. 355, the legislation was attacked upon the ground that legislative power was conferred upon the Commission. We there said, speaking through Mr. Justice Stone, at page 362:

"It is held that the functions and duties of such Commissioners are administrative or ministerial, and neither legislative, executive or judicial."

25 Upon this question see also, Union Bridge Company v. United States, 204 U. S. 364; Hubbell v. Higgins, 148 Iowa 36; State v. Railway Company, 76 Kansas 467; Oregon R. & M. Co. v. Campbell, 173 Fed. 957; and Railroad Commission Cases, 116 U. S. 307.

We are of opinion that the Act in question is a valid exercise of the police power of the State, and that the judgment must be affirmed.

FLAVIUS L. BROOKE.
AARON V. McALVAY.
FRANZ C. KUHN.
RUSSELL C. OSTRANDER.
JOSEPH B. MOORE.
J. H. STEERE.
JNO. E. BIRD.
J. W. STONE.

(Endorsed:) Filed Dec. 18, 1914. Chas. C. Hopkins, Clerk Supreme Court.

26 At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the eighteenth day of December, in the year of our Lord one thousand nine hundred and fourteen.

Present: The Honorable Aaron V. McAlvay, Chief Justice; Flavius L. Brooke, Franz C. Kuhn, John W. Stone, Russell C. Ostrander, John E. Bird, Joseph B. Moore, Joseph H. Steere, Associate Justices.

No. 26316.

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff,
vs.
LE ROY BRAZEE, Defendant.

The record and proceedings in this cause having been removed to this Court by writ of error issued to the Recorder's Court of Detroit, and the same and the matters in error assigned, having been seen and inspected and duly considered by the Court, and it appearing to this Court that in said record and proceedings, and in the giving of judgment in said Recorder's Court there is no error, therefore it is ordered and adjudged that the judgment of said Recorder's' Court of Detroit be and the same is hereby in all things affirmed.

27 Supreme Court of the State of Michigan.

LEROY BRAZEE, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF MICHIGAN, Defendant in Error.

Petition for an Allowance of Writ of Error from the Supreme Court to a State Court.

To the Honorable Flavius L. Brooke, Chief Justice of the Supreme Court of the State of Michigan:

Your petitioner, LeRoy Brazee, of the City of Detroit, a citizen of the State of Michigan and of the United States, and has his residence at the City of Detroit, respectfully represents unto the Court:

First. That heretofore, to-wit, upon the 19th day of November, A. D. 1913, there was tried in the Recorder's Court for the City of Detroit, in the County of Wayne and State of Michigan, a case in which the People of the State of Michigan was complainant and your petitioner was defendant.

Second. The allegations of the complainant in said case *was* set forth in an information, charging the defendant with the violation of the Labor Law, Act 301 of the Public Acts of 1913 of the General Laws of the State of Michigan.

Third. That upon the trial of said cause in said Recorder's Court, your petitioner made a motion to quash the information and to discharge the defendant for the reasons set forth in said motion, which is a part of the records and files in said proceeding, and the Court denied each and all of the reasons set forth in said motion to quash said proceeding, and the defendant stood convicted by a jury under said law. That thereupon your petitioner appealed by Writ of error
28 to the Supreme Court of the State of Michigan, from said judgment entered by the Recorder's Court of the City of Detroit, which said Supreme Court is a final Court of Appeal in this State.

Fourth. That the right claimed by your petitioner, as set forth in his motions filed in said cause, was in substance that Act 301 of the Public Acts of 1913 of the General Laws of the State of Michigan, is unconstitutional and void, and that the Court acquired no jurisdiction to try the petitioner for the commission of an alleged offense thereunder, as set forth in the information filed in said cause.

Fifth. That your petitioner set forth in his motions to quash various reasons by which he claimed that said law was invalid and unconstitutional, and that his conviction under said alleged law is in contravention of the State and Federal Constitution-.

Sixth. That the facts in said proceeding are more fully set forth in the motions filed therein, and the records and files in said cause.

Seventh. That the rights of your petitioner as a citizen of the State of Michigan, and of the United States, were entitled to be protected under and by virtue of the provisions of the 14th amendment of the Constitution and Statutes of the United States, which provides

that no State shall abridge the rights, privileges or immunities of the citizens of the United States, and further that the rights of your petitioner so guaranteed thereunder, were property rights within the meaning of the provisions of the 14th amendment of the Constitution of the United States, prohibiting any State from depriving any person of life, liberty or property without due process of law, or denying to any person within its jurisdiction the legal protection of the law.

Eighth. That the value and loss of business and property of your petitioner, as the result of the prosecution and conviction of the petitioner under said law by the People of the State of Michigan,
29 was approximately twenty-five hundred or three thousand dollars.

Ninth. That the appeal of your petitioner was duly heard in the Supreme Court of this State, and the decision and judgment of said Supreme Court was against the rights set up by your petitioner and said Supreme Court entered an order and judgment in said cause confirming the judgment of conviction by the Recorder's Court of the City of Detroit of your petitioner therein.

Therefore your petitioner respectfully requests that you indorse hereon, or on the Writ of Error hereto attached, an order allowing the issue of a Writ of Error to remove the record of said cause to the Supreme Court of the United States for review, in accordance with the provisions of the Revised Statutes of the United States, and that a citation may issue under your signature, direct to the said defendant as required by the rule.

And your petitioner will ever pray.

LE ROY BRAZEE,
Petitioner.

30 Supreme Court of the United States.

LE ROY BRAZEE, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF MICHIGAN, Defendant in Error.

Assignments of Error.

To the Honorable Flavius L. Brooke, Chief Justice of the State of Michigan:

Now comes the said plaintiff in error and respectfully submits that in the record, proceedings, decision, and final judgment of the Supreme Court of the State of Michigan, in the above entitled matter, there is manifest error, in this, to-wit:

First. That the Court erred in holding that the provisions of Act number 301, of the Public Acts of 1913, of the General Laws of the State of Michigan, for the year 1913, are not in conflict and in violation of the provisions of the 14th amendment of the Constitution of the United States, for the State of Michigan, by and through the provisions of said Act 301, aforesaid, assumes and seeks (1) To de-

prive the plaintiff in error, and certain other citizens of the United States and of the State of Michigan, of rights, privileges, and immunities secured to other citizens of the United States and of the said State; (2) To deprive the plaintiff in error, and other citizens of the United States of liberty and property, without due process of law; (3) To deprive and to deny to the plaintiff in error, and certain citizens and persons within the jurisdiction of the State of Michigan, the equal protection of the law.

Second. The Court erred in holding that by the provisions of said Act, the plaintiff in error is not deprived of rights, privileges and immunities secured to other citizens of the United States and of the State of Michigan, by the Federal Constitution and laws of the
31 United States.

Third. The Court erred in holding that by the provisions of said Act the plaintiff in error is not deprived of his rights under Article I of Sec. 9 of the Federal Constitution.

Fourth. The Court erred in holding that by the provisions of said Act the plaintiff in error is not deprived of liberty and property without due process of law.

Fifth. The Court erred in holding that the provisions of said Act do not deny to the plaintiff in error, the equal protection of the law.

Sixth. The Court erred in holding that the said Act and the authority exercised thereunder, and thereby authorized to be exercised thereunder, is within the police powers of the legislature of the State of Michigan.

Seventh. The Court erred in holding the provisions of said Act making it unlawful for the plaintiff in error to carry on his legitimate business as a private employment agent, without first taking out a license from the State, and giving a surety bond to the State, to be within the police powers of the State.

Eighth. The Court erred in holding the provisions of said Act requiring the plaintiff in error to take out a license and to give bond, not to be an abridgment of the inalienable and constitutional right of the plaintiff in error, to pursue a lawful avocation, in a lawful way, without interference by the State.

Ninth. The Court erred in holding that Sections 3, 4 and 6 of said Act are not unreasonable, arbitrary, and do not abridge the right of the plaintiff in error to make his own lawful contracts, and do not prevent the plaintiff in error to legitimately advertise his business.

Tenth. The Court erred in holding that Section 1 of said Act belongs to that class of trades and occupations which are in-
32 herently harmful and dangerous to the public health, public morals, public safety, and is subject to the police regulations.

Eleventh. The Court erred in holding that section 5 of said Act, which limits the fees that may be charged by any person, or the plaintiff in error, in the prosecution of his business, is legal and constitutional, which said provision is a limitation on the right to contract and is a deprivation of the property of the plaintiff in error, without due process of law.

Twelth. The Court erred in holding that the provisions of said

Act *is* not class legislation, and *does* not unlawfully discriminate between the business of the plaintiff in error, and the citizens who were engaged in other industrial and commercial pursuits for a livelihood.

Thirteenth. The Court erred in holding that the provisions of said Act do not cast special burdens upon the plaintiff in error, different to those engaged in other vocations and industrial pursuits.

Fourteenth. The Court erred in holding that said Act does not grant special and exclusive privileges to certain citizens, which it denies to the plaintiff in error, and to other citizens of the State.

Fifteenth. The Court erred in holding that the provisions of said Act are uniform in their operation throughout the State of Michigan, upon all citizens of the State similarly situated.

Sixteenth. The Court erred in holding that the provisions of said Act do not deprive the plaintiff in error of the right to earn a livelihood on the pursuit of a lawful and harmless occupation, and of the liberty to contract in reference to said business.

Seventeenth. The Court erred in holding that the character of the business of employment agencies, as is provided in section 1 of said Act, is such as to facilitate the practice of fraud upon the ignorant and credulous.

33 Eighteenth. The Court erred in holding that the business of private employment agencies, as provided in Section 1 of said Act, is in the same class and governed by the same laws regulating pawn-brokers, hawkers, peddlers and the dealers in intoxicating liquors.

Nineteenth. The Court erred in holding that under the provisions of this Act the State Labor Commissioner had authority to prorate the license fees, according to the period of time covered by the license.

Twentieth. The Court erred in holding that the provisions of this Act are reasonable and not oppressive nor prohibitive.

Twenty-first. The Court erred in holding that the information filed in said cause against the plaintiff in error, was valid and not fatally defective.

Twenty-second. The Court erred in holding that said Act does not confer on the State Labor Commissioner, executive, legislative and judicial power, and that it does not confer on him arbitrary power to issue or withhold the license in his discretion, and to designate the number and qualifications of the applicants for license.

Twenty-third. The Court erred in holding "that respondent avers that said Act is unconstitutional and void for many reasons, which we find it unnecessary to enumerate at large in this opinion."

Twenty-fourth. The Court erred in holding that this question was considered by the Supreme Court of the United States.

Twenty-fifth. The Court erred in holding with the Supreme Court of the State of Illinois, by saying, "that Court determined the Act contravened neither the State nor Federal Constitution."

Twenty-sixth. The Court erred in holding that the exact point was determined contrary to the contention of the respondent in the case of Kennedy vs. State Board of Registration.

Twenty-seventh. The Court erred in holding that said Act does

not offend against Article V, Section 30 of the State Constitution.

34 Twenty-eighth. The interpretation placed upon Act number 301 of the Public Acts of 1913 of the Laws of Michigan, by the Supreme Court of the State of Michigan, is contrary to, in violation of, and in contravention of the Constitution of the United States and the Statutes thereof, which guarantees to plaintiff in Error, and the citizens of the United States, and the State of Michigan, the right to choose *his* own lawful vocation, and to make all lawful contracts, and to have them enforced in the Courts of Justice.

Twenty-ninth. Said Court erred in not declaring Act number 301 of the Public Acts of 1913 of the General Laws of Michigan, unconstitutional and void, and setting aside and holding for naught the judgment of conviction of Plaintiff in error, rendered by the Recorder's Court of the City of Detroit, County of Wayne and State of Michigan, and entering a judgment directing that the plaintiff in error be discharged from the Detroit House of Correction (a penitentiary) where he is now detained and restrained of his liberty.

Therefore the said plaintiff in error prays that the judgment rendered by the Supreme Court of the State of Michigan, sustaining the conviction and affirming the judgment of conviction of the plaintiff in error, may be reversed, and a judgment entered in favor of said plaintiff in error, discharging him from prison, as set forth in petitioner's motions and the records and files in said cause.

PROCTOR K. OWENS,
Attorney for Plaintiff in Error,
606 *Hodges Building, Detroit, Michigan.*

35 UNITED STATES OF AMERICA, *ss:*.

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The People of the State of Michigan and Le Roy Brazee wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction

36 of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or examption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Le Roy Brazee as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and

full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-seventh day of January, in the year of our Lord one thousand nine hundred and fifteen.

[Seal of the U. S. District Court, Eastern District of Mich.]

ELMER W. VOORHEIS,
Clerk of the United States District Court,
Eastern District of Mich.

Allowed by
FLAVIUS L. BROOKE,
Chief Justice of the Supreme Court
of the State of Michigan.

36½ To the Supreme Court of the United States:

The execution of the within Writ appears by the transcript of Record hereto annexed.

Dated, Lansing, Michigan, February 16, 1915.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk of the Supreme Court of the
State of Michigan.

37 UNITED STATES OF AMERICA, *ss:*

To the People of the State of Michigan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Michigan wherein Le Roy Brazee is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Flavius L. Brooke, Chief Justice of the Supreme Court of the State of Michigan, this twenty-sixth day of January, in the year of our Lord one thousand nine hundred and fifteen.

[Seal of the Supreme Court of Michigan, Lansing.]

FLAVIUS L. BROOKE,
Chief Justice of the Supreme Court of the
State of Michigan.

37½ On this third day of February, in the year of our Lord one thousand nine hundred and fifteen, personally appeared Carroll L. Hopkins before me, the subscriber, Charles C. Hopkins, Clerk Supreme Court, and makes oath that he delivered a true copy of the within citation to Hon. Grant Fellows, Attorney General, by delivering the same to him personally, at his office in the Capitol in the City of Lansing, State of Michigan.

CARROLL L. HOPKINS.

Sworn to and subscribed the 3rd day of February, A. D. 1915.

CHAS C. HOPKINS,
Clerk Supreme Court.

38 Supreme Court of the State of Michigan.

LE ROY BRAZEE, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF MICHIGAN, Defendant in Error.

IN THE SUPREME COURT, *ss:*

I, Charles C. Hopkins, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the annexed and foregoing is a true copy of the record, and of all proceedings had and determined in the above entitled cause by said Supreme Court, including the original decision and reasons therefor, signed by the Judges of said Court and filed in my office, as appears of record and on file in said cause; that I have compared the same with the original, and it is a true transcript therefrom and of the whole thereof; that attached thereto are the Petition for the Writ of Error, the Writ of Error with allowance endorsed thereon, the citation with proof of service endorsed thereon, together with the assignments of error by the attorney for the plaintiff in error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court, at the City of Lansing, this sixteenth day of February in the year of our Lord, one thousand nine hundred and fifteen.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk of the Supreme Court of Michigan.

Endorsed on cover: File No. 24,622. Michigan Supreme Court. Term No. 402. Le Roy Brazee, plaintiff in error, vs. The People of the State of Michigan. Filed March 18th, 1915. File No. 24,622.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 878. 402

LE ROY BRAZEE, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN.

MOTION FOR RESTRAINING ORDER, &c.

PROCTOR KNOTT OWENS,
Attorney for Plaintiff in Error.

(24,622)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 878.

LE ROY BRAZEE, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN.

MOTION FOR RESTRAINING ORDER, &c.

To the Supreme Court of the United States:

Your petitioner, Le Roy Brazee, of the city of Detroit, a citizen of the State of Michigan and of the United States, who has his residence at the city of Detroit, respectfully represents unto this honorable court:

First. That heretofore, to wit, upon the 19th day of November, A. D. 1913, there was tried in the recorder's court for the city of Detroit, in the county of Wayne and State of Michigan, a case in which The People of the State of Michigan was complainant and your petitioner was defendant.

Second. The allegations set up in said complaint filed in said cause against your petitioner charged the petitioner

with the violation of the alleged labor law, act 301 of the Public Acts of 1913 of the General Laws of the State of Michigan.

Third. That upon the trial of said cause in said recorder's court your petitioner made a motion to quash the information and to discharge the petitioner, for the reasons set forth in said motion, which is a part of the records and files in said cause, which your petitioner begs leave to refer to for greater certainty, and to make a part of this petition, and the court denied each and every of the reasons set forth in said motion to quash said proceedings, and ordered the petitioner to proceed to a trial, under and by virtue of the law and information filed therein, and your petitioner was tried and convicted for the violation of said act.

Fourth. Your petitioner further represents unto the court that he sued out a writ of error in the Supreme Court in said cause, setting forth the fact that said law was invalid and unconstitutional, contravening the constitutional rights of your petitioner, both under the State and Federal Constitutions.

Fifth. Your petitioner further represents that said cause was finally tried by the Supreme Court of the State of Michigan upon a writ of error, and said court ultimately sustained the constitutionality of said statute and issued a mittimus to the judge of the recorder's court to proceed to judgment, which said court obeyed the mandates of the Supreme Court in pronouncing judgment and sentence upon your petitioner, sentencing the petitioner to the Detroit House of Correction (a penitentiary) for ninety days, without the option of a fine, notwithstanding the fact that petitioner stood ready, willing, and able to pay a reasonable fine, but the option was denied to petitioner by the court, which said fine and imprisonment of the petitioner, under the circumstances in this case, was an abuse of the discretion of said court, unreasonable, unjust, and discriminatory as to your petitioner

and other citizens, who had been convicted for the violation of said act, in that your petitioner was denied the option of a fine by said court, while other citizens paid fines, and on many others sentence was suspended and no fine paid.

Fifth-A. Your petitioner further shows unto the court that under act 301 of the Public Acts of 1913 of the General Laws of the State of Michigan, he is absolutely stripped of his rights to contract and to conduct an innocent, innocuous, harmless, and beneficial business by the legislature of the State of Michigan, in that it has in said act vested executive, legislative, and judicial power in the State Labor Commissioner, James V. Cunningham, to say whether your petitioner shall engage in his chosen occupation to make a living for himself and family. If such legislation under the guise of the police power of the State can be sustained, then the legislature, at its option, will be able to regulate the private and personal affairs of any and all citizens of the State of Michigan, and will make itself the guardian to make the contracts for its citizens, regardless of whether they are *sui juris* or *non compos mentis,* which would ultimately destroy popular government.

Sixth. Your petitioner further represents unto the court that a writ of error was granted by this court to the Supreme Court of the State of Michigan in said cause, in which your petitioner is plaintiff in error and the State of Michigan is defendant in error.

Seventh. Your petitioner further shows unto the court that all of the proceedings in said cause have been certified to this court, by the clerk of the Supreme Court of the State of Michigan.

Eighth. Your petitioner further represents unto the court that various reasons were set forth in said proceedings why

act 301 of the Public Acts of 1913 of the General Laws of the State of Michigan is unconstitutional and void. A few of the principal reasons your petitioner sets forth in this petition as follows:

(*a*) That said act is in conflict with and in violation of Article XIV of the Constitution of the United States, in that it deprives the petitioner and certain other citizens of the United States and the State of Michigan of rights, privileges, and immunities secured to other citizens of the United States and the State of Michigan.

(*b*) That it deprives the petitioner and other citizens of the United States of liberty and property without due process of law.

(*c*) That it deprives the petitioner, and other citizens and persons, within the jurisdiction of the State of Michigan, the equal protection of the law.

(*d*) That it is in violation of the Revised Statutes of the United States, section 1977, which provides that all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce their contracts.

(*e*) That act 301 of the Public Acts of 1913, of the General Laws of the State of Michigan, section 5 of said act, contravenes article XIV of the Federal Constitution and the Federal statute above cited. Said section is as follows, to wit:

> "SEC. 5. The entire fee or fees for the procuring of one situation or job, and for all expenses, incidental thereto, to be received by any employment agency, from any applicant for employment at any time, whether for registration or other purposes, shall not exceed ten per cent of the first month's wages.

> Such ten per cent shall be determined by the monthly rate offered by the applicant for help, regardless of the time during which applicant for employment remains at the employment procured him. Where a registration fee is charged, if the applicant, through no fault of his own, does not secure through the employment agency to which the fee has been paid, within one month, the employment applied for, said agency shall repay to said applicant, upon demand, one-half the full amount of the registration fee paid. No registration fee shall exceed the sum of one dollar."

(*f*) That section 6 also contravenes the Fourteenth Amendment of the Constitution and the Federal statute above cited, in that said section provides as follows, to wit:

> "No employment agent or agency shall send an applicant for employment to an employer who has not applied to such agent, or agency, for help or labor."

And that many other provisions of said statute, which is fully set up in the original proceeding now on file in this cause, contravene the above amendment to the Federal Constitution and the Federal statute herein cited.

Ninth. Your petitioner maintains that it is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with any one with whom he can make contracts, and if he is wrongfully deprived of his rights by others he is entitled to redress.

Tenth. Your petitioner further represents unto the court that said statute and said sections above cited, and said statute as a whole, destroy the most sacred rights of your peti-

tioner—the right to contract. All of the rights of contract which are necessary for the carrying on of the ordinary business affairs are protected by the Constitution of the United States and the statutes thereof, and are not capable of being restrained or abridged by legislative action. It is part of the natural and civil liberty of your petitioner to form business relations and to make contracts free from the dictations of the State. It is, therefore, the general rule that a man is free to ask for his wares or his services whatever price he is able to get and others are willing to pay. If there is one thing more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and their contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by courts of justice.

Eleventh. Your petitioner maintains that it is self-evident that the act 301 of the Public Acts of 1913 of the General Laws of the State of Michigan contravenes the Federal Constitution and statute above stated, in that said constitutional safeguard condemns arbitrary and unequal and partial legislation, and it is equally clear that the right to make contracts and have them enforced as others may is one of the rights so secured to every citizen under said Constitution.

Twelfth. Your petitioner further represents unto the court that the legislature of the State of Michigan in the enactment of said law has attempted to do what in this country cannot be done, that is, prevent persons who are *sui juris* from making their own contracts.

Thirteenth. Your petitioner further represents unto the court that he, as an American citizen, has a right to labor and employ labor, and to secure employment for laborers and make contracts in respect thereto, to enforce all lawful contracts, to sue and give evidence and to own, purchase, and sell property. And the deprivation of these rights by the

Michigan legislature is slavery and oppression; that the right to acquire and possess property necessarily includes the right to contract, for it is the principal mode of acquisition and is the only way in which a person can rightly acquire the property by his own exertion. Of all the rights of persons it is the most essential to human happiness.

Fourteenth. Your petitioner further represents unto the court that as a result of this invalid and unconstitutional law, and its arbitrary enforcement by the State Labor Commissioner, James V. Cunningham, and the despotic power wielded by said State Labor Commissioner in his prosecution and persecution of your petitioner, has resulted in the losses of your petitioner in the sum of twenty-five hundred or three thousand dollars.

Fifteenth. Your petitioner further represents unto the court that he had been engaged in and conducting an employment agency for the past seven years, and as a result of his skill and energies and capital expended in the advertising of his business your petitioner has built up a large and lucrative business, from which he received large incomes, and that by virtue of the decision of the Supreme Court of the State of Michigan, sustaining the constitutionality of said statute, and through the arbitrary and despotic power wielded by the State Labor Commissioner, James V. Cunningham, your petitioner is unable and absolutely prohibited by the State Labor Commissioner from further engaging in said business, and your petitioner could not engage in said business without being subject to criminal prosecution, unless the State Labor Commissioner would issue to him a license authorizing him under said law to conduct said business, and then the petitioner would take said license subject to the revocation of the State Labor Commissioner at his will, which in all probability such a course would be pursued by the State Labor Commissioner because of his animosity toward your petitioner.

Sixteenth. Your petitioner further represents unto the court that he has expended in the neighborhood of six or seven thousand dollars, in the past seven years, in advertising and building up his business in this community, and that your petitioner has lost several thousand dollars as the result of being prosecuted under said statute by the said State Labor Commissioner, and unless your petitioner is permitted by an order of this court to engage and continue in his said business the petitioner will sustain a total loss of his business and property, which has taken him many years to build up and acquire.

Seventeenth. Your petitioner further represents unto the court that the license fee required of your petitioner to be paid to the State Labor Commissioner in the city of Detroit for the privilege of conducting his employment agency is the sum of one hundred dollars, which your petitioner has offered to pay, and the same has been refused by said State Labor Commissioner. The petitioner stands ready, willing, and able to give to the State of Michigan an indemnifying bond in the penal sum of five hundred dollars, or any reasonable sum that this court may deem necessary in the premises, to secure the State against any loss it might sustain in event that this court should sustain the constitutionality of said statute.

Eighteenth. Your petitioner further represents unto this court that said statute 301 of the Public Acts of 1913 of the General Laws of the State of Michigan is unconstitutional and void for the reasons set up in this petition, and for the further reasons set up in the original case filed in this court.

Therefore your petitioner prays:

1. That an order be granted by this court, issued against James V. Cunningham, State Labor Commissioner of the State of Michigan, restraining him from in any manner

interfering with your petitioner in the transaction of his business in the State of Michigan, and to command the said James V. Cunningham to issue a license to the petitioner, Le Roy Brazee, as is provided by act 301 of the Public Acts of 1913 of the General Laws of the State of Michigan, upon the payment of one hundred dollars license fee, as is required by said act, and further restraining all other persons that may act or be called upon to act by said Commissioner from interfering with the petitioner in the transaction of his business in the State of Michigan.

2. And your petitioner further prays that he be permitted to re-engage in and to transact his business as an employment agency in the State of Michigan, city of Detroit, during the pendency of this suit, subject to the giving of a bond of five hundred dollars to indemnify the State in event that this court sustain the constitutionality of said statute, or to furnish such bond as this court may deem necessary to indemnify the State of Michigan, and that the said State Labor Commissioner, James V. Cunningham, and all persons acting under him, or by his authority, may be temporarily restrained and enjoined by an order of this court from interfering or in any way molesting the petitioner, or from enforcing or attempting to enforce the said act 301 of the Public Acts of 1913 of the General Laws of the State of Michigan against your petitioner until a final adjudication of this statute as to its constitutionality by this court be determined.

3. And your petitioner prays for such other and further relief in the premises as law and justice demand.

And your petitioner will ever pray, etc.

LE ROY BRAZEE.

PROCTOR KNOTT OWENS,
Attorney for Petitioner.

606 Hodges Building, Detroit, Michigan.

STATE OF MICHIGAN,
County of Wayne, ss:

On this 15th day of March, A. D. 1915, before me, a notary public in and for said county, personally appeared Le Roy Brazee, and made oath that he has read the foregoing petition by him subscribed and knows the contents thereof, and that the same is true in substance and in fact.

LEVEY J. IVEK,
Notary Public, Wayne County, Michigan.

My commission expires February 15, 1919.

[Endorsed:] The Supreme Court of the United States. Le Roy Brazee, plaintiff in error, *vs.* The People of the State of Michigan, defendant in error. Petition for order restraining the State Labor Commissioner of the State of Michigan and his subordinates from interfering with petitioner in the prosecution of his business. Proctor K. Owens, attorney for plaintiff in error, 606 Hodges Building, Detroit, Michigan.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 878. 402

LE ROY BRAZEE, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN.

BRIEF FOR PLAINTIFF IN ERROR ON MOTION FOR RESTRAINING ORDER, &c.

PROCTOR KNOTT OWENS,
Attorney for Plaintiff in Error.

(24,622)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 878.

LE ROY BRAZEE, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,
DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR ON MOTION FOR RESTRAINING ORDER, &c.

Brief Statement of Facts.

On the 23d day of August, A. D. 1913, the petitioner executed a bond with the American Surety Company as surety in the sum of one thousand dollars, to be paid to the said People of the State of Michigan in event of the non-compliance of said act 301 of the Public Acts of 1913 of the General Laws of the State of Michigan. That the execution of said bond was required as a condition precedent to the issuing of the license to the petitioner by the State Labor Commissioner to conduct a private employment agency in the city of Detroit, as is provided by said act, section 1.

That for said license petitioner paid the sum of one hundred dollars for a period of one year. That on the 19th day of November, A. D. 1913, an information was filed against the petitioner in the recorder's court of the city of Detroit, No. 17375. That the petitioner was brought before the judge of the recorder's court for the city of Detroit, William F. Connelly, and was tried for the alleged violation of said alleged law here in controversy. That petitioner's attorney made a motion to quash the information and to hold the same for naught for the resaons set up in said motion. That the court overruled the motion to quash, and ordered the petitioner to proceed to a trial, which resulted in the conviction of petitioner under said law. That the case was taken to the Supreme Court of the State of Michigan upon a writ of error, and said court sustained the constitutionality of the law. That this court issued a writ of error to the Supreme Court of the State of Michigan to review the opinion of the said Supreme Court of Michigan. That said cause is now on file in this court.

Brief of Law and Argument.

The case of Yick Wo *vs.* Hopkins, sheriff, 118 U. S. Rep., 356, is a case where the petitioner petitioned for a writ of *habeas corpus,* alleging that he was illegally deprived of his personal liberty by the defendant sheriff of the city and county of San Francisco. That the petitioner was tried and convicted under and by virtue of an ordinance enacted by the Board of Supervisors of that county, and was adjudged to pay a fine of ten dollars, in default thereof to be imprisoned at the rate of one dollar for every day of fine until said fine should be satisfied. That the fine was not paid, and the said petitioner was committed to prison. Said ordinance under which petitioner was convicted and sentenced is set forth in this decision. The court in discussing the various theories and questions involved in the case, near the top of page 362, in part said:

> "If it is competent for the Board of Supervisors to pass a valid ordinance, prohibiting the inhabitants of San Francisco from following an ordinary, proper and necessary calling, within the limits of the city and county, except at its arbitrary and unregulated discretion, and special consent, and it can do so if this ordinance is valid, then it seems to us there has been a wide departure from the principles that have heretofore been supposed to guard and protect the rights, property and liberty of the American people. And if by an ordinance general in its terms and form, like the one in question, by reserving an arbitrary discretion in the enacting body to grant or deny permission to engage in a proper and necessary calling, a discrimination against any class can be made in its execution, thereby evading and in effect nullifying the provisions of the National Constitution, then the insertion of provisions to guard the rights of every class and person in that instrument was a vain and futile act."

We maintain that the same arbitrary and unreasonable conditions are incorporated in Act 301 of the Public Acts of 1913 of the General Laws of the State of Michigan as in the ordinance cited in the above opinion, and the same arbitrary power is vested in the State Labor Commissioner of Michigan to withhold or grant license to the petitioner, as is incorporated in the above ordinance, which the petitioner maintains that the conditions therein set forth vesting such unlimited and discretionary power in the State Labor Commissioner is in contravention of the Federal Constitution.

The court near the center of page 366 in the above case, in discussing the decision handed down by the Supreme Court of California, upon the questions involved therein, said:

> "We are not able to concur in that interpretation of the power conferred upon the supervisor. There is nothing in the ordinance which points to such a regulation of the business of keeping and conducting laundries."

> "They seem intended to confer and actually do confer not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent, not only as to places, but as to persons. So that if an applicant for such consent, being in every way a competent and qualified person, and having complied with every reasonable condition, demanded by any public interests, should failing to obtain the requisite consent of the supervisors, to the prosecution of his business, apply for redress by the judicial process of mandamus, to require the supervisor to consider and act upon his case, it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent without reason and without responsibility. The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary and acknowledges neither guidance nor restraint."

Your petitioner maintains that the case above cited is very applicable to the case at bar, in that the statute here in controversy vests executive, legislative and judicial power to issue a license to the petitioner, or to withhold it at his will.

This court in the further discussion of the case above cited, near the center of page 367, relative to the police power of the State and arbitrary legislation said:

> "That under the Fourteenth Amendment of the Constitution of the United States it was undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their person and their property, the prevention and redress of wrongs and the enforcement of contracts; that no impediment to be inter-

> posed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burden should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon than such as is prescribed to all for like offenses. Class legislation discriminating against some and favoring others, is prohibited."

The court in the further discussion of said decision, under the Fourteenth Amendment of the Constitution of the United States, on page 369, said:

> "The Fourteenth Amendment of the Constitution of the United States is not confined to the protection of citizens. It says: 'Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.' These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, or color, or of nationality, and the equal protection of the laws is a pledge of the protection of equal laws. It is accordingly enacted by section 1977 of the Revised Statutes, that all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts."

The court in the further discussion of said ordinance and arbitrary laws and their effect, in the above case, near the bottom of page 372, says:

> "It lays down no rules by which its impartial execution can be secured, or partiality and oppression prevented. It is clear that giving and enforcing these notices may, and quite likely will bring ruin to the business of those against whom they are directed, while others from whom they are withheld may be actually benefited by what is thus done to their neighbors, and when we remember that this action or non-action may proceed from enmity or prejudice

> from partisan zeal or animosity, from favoritism and other improper influences and motives, easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or to comment upon the injustice capable of being brought under cover of such a power, for that becomes apparent to every one who gives to the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void."

The court in the further discussion of arbitrary laws in the above case, near the bottom of page 373, says:

> "Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority, with an evil eye, and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this court." The court citing cases.

We maintain that the petitioner is placed in the same position, under the law in controversy, as the parties in the case above cited, in that the petitioner is deprived in his constitutional rights to conduct his own lawful and legitimate business without being subjected to persecution and criminal punishment.

In the case *In re Grice*, 79 Federal, page 627, the facts, briefly, are that a petition was filed by William Grice for a writ of *habeas corpus* to release petitioner from prison, and the same was heard by the court, and the court held the law was void and discharged the petitioner.

The court, in discussing the various questions therein raised relative to the validity of such laws, and the right of

the citizen to follow his vocation and to make his own lawful contracts relative thereto, on page 640, says:

> "Neither the State nor the National Legislature possesses any right to limit these natural privileges of contracting or conducting business."
>
> "Any law which undertakes to abolish these rights, the exercise of which does not involve infringement upon the rights of others or to limit the exercise thereof, beyond what is necessary to provide for the public welfare and general security, cannot be included in the police power of the Government."
>
> "The right of liberty embraces the right of man to exercise his faculties and follow any lawful avocation for the support of life."
>
> "Liberty in its broad sense, as understood in this country, means the right, not only of freedom from servitude, imprisonment, or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation."
>
> "The legislature cannot, under the pretense of exercising the police power, or any other claim or pretense, enact laws prohibiting harmless acts, not concerning the health, safety or welfare of society, and the courts may examine into and annul such illegal legislation."

The court in the further discussion of the right, power, and liberty of the citizen to contract, in the above case, on page 641, says:

> "One of the most sacred rights of liberty is the right of contract. All of the rights of contract which are necessary for the carrying on of ordinary business affairs are protected by the Constitution, and are not capable of being restrained by legislative action. It is part of the natural and civil liberty to form business relations free from the dictation of the State; that a like freedom to be secured and enjoyed in determining the conditions and terms of the contract, which constitutes the business relation or transaction.

> It is therefore the general rule that a man is free to ask for his wares or his services at whatever price he is able to get, and others are willing to pay."

We maintain that said act here in controversy makes criminal the making or carrying out of any contract obligation or agreement by which the petitioner or any person between themselves make, in which the petitioner agrees to procure employment for the unemployed for certain consideration and said unemployed agrees to pay such consideration in event that your petitioner can procure such position, unless your petitioner complies with said statute here in controversy, which is directly in conflict with and in contravention of the Federal Constitution and the Federal Statute.

The court in the further discussion of the questions involved in the above case relative to the rights of property and the power and right of the citizen to make his own lawful contract, near the bottom of page 646, says:

> "Discrimination may be as potent against the citizen, in the direction of his property, as if aimed directly against himself personally. The right to hold or sell property and to make agreements and contracts concerning it, which may be believed by the owner to be for his betterment, is the most essential right of property. With some citizens this right is taken away; with others it is encouraged."

We maintain that this law is not only arbitrary and discriminatory in its provisions, but it is enforced in an arbitrary and discriminatory manner against the petitioner by the State Labor Commissioner in an effort on his part to drive the petitioner out of business, which the said Labor Commissioner attempted to do by endless prosecution and persecution, which ultimately resulted in this cause reaching this court in order that the petitioner might get relief. And the case above cited is very pertinent to the case at bar.

Near the center of page 650, the court in the above case

in discussing the individual right of the citizen and the laws governing them relative thereto says:

> "The rights of every individual must stand or fall by the same rule of law that governs every other member of the body politic or land under similar circumstances, and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void."
>
> "Such abuses resulted in the adoption of the Magna Charta in England, which is, and for centuries has been, the foundation of English liberty. Its infraction was a leading cause why we separated from that country, and its value as a fundamental rule for the protection of the citizen against legislative usurpation was the reason of its adoption as a part of our Constitution."

The petitioner maintains that the rule of law applied in the above case by the court, upon the various questions therein involved, relative to the rights of individual citizens and the protection guaranteed to them under the Constitution of the United States, is very pertinent and applicable to the case at bar, as your petitioner under said statute is stripped of his right to contract, and deprived of his property without due process of law.

In the case of *Ex parte* C. E. Dickey, 144 Cal., 234, the facts in brief are that a writ of *habeas corpus* was directed to the sheriff of the city and county of San Francisco, holding the petitioner under judgment of the police court of said city and county, George H. Cabiniss, judge. In this case the petitioner attacks the constitutionality of an act of the legislature defining the duties of employment agents, making it a violation of the act a misdemeanor and fixing penalties therefor. Said statute is set forth in the opinion. The court said:

> "That whether the act be a valid exercise of the police power is a single question here calling for de-

termination. The limit of the exercise of the police power in these cases must be with reference to the comfort, safety, or welfare of society."

"Where the profession or business is not dangerous to the public, either directly or indirectly, it cannot be subjected to any police regulation whatever, which does not fall within the power of taxation for revenue."

"That the due exercise of the police power is limited to the preservation of the public health, safety, and morals, and that the legislation that transcends these objects, whatever justification it may claim for its existence, cannot be upheld as a legitimate police regulation."

"As part of his property in that business are the services that he renders in obtaining employment for those seeking it."

"It is not compulsory upon any one to employ him, and who so seeks to avail himself of his services is at liberty to reject them if the terms of the contract for compensation are not satisfactory to him."

"This right of contract common to the followers of all legitimate vocations is an asset of the petitioner in his chosen occupation, and as has been said, is a part of the property in enjoyment of which he is guaranteed protection by the Constitution."

"By the act in question he is arbitrarily stripped of this right of contract, and deprived of his property and left in following his vocation, and in pursuit of his livelihood, circumscribed and hampered by law, not applicable to his fellow-men in other occupations."

"Why should not the butcher and the baker dealing in the necessaries of life, be restricted in their right of contract, and consequently in their profits to ten, five, or one per cent?"

"Why should not the contractor, the merchant, the professional man, be likewise subjected to such paternal laws, and why not the legislature fix a price and value of service of labor?"

The court in the above case declared the law invalid and unconstitutional and discharged the prisoner from custody.

The petitioner in this case maintains that the case above quoted is on all fours with the case at bar, and that the petitioner was illegally convicted and imprisoned in the Detroit House of Correction (a penitentiary) under and by virtue of said act here in controversy, and that said act is both against the State and Federal Constitutions, depriving the petitioner of life, liberty, and property without due process of law.

Your petitioner maintains, in view of the petition herein filed, and the authorities cited in his brief, that the alleged law under which the petitioner was convicted and sentenced to the Detroit House of Correction (a penitentiary) by the judge of the recorder's court for ninety days, without the option of a fine, is unconstitutional and void, and the petitioner is entitled to his discharge.

Respectfully submitted.

PROCTOR KNOTT OWENS,
Attorney for Petitioner.

603 *Hodges Building, Detroit, Michigan.*

[Endorsed:] The Supreme Court of the United States. Le Roy Brazee, plaintiff in error, *vs.* The People of the State of Michigan, defendant in error. Brief for plaintiff in error. Proctor K. Owens, attorney for plaintiff in error, 603 Hodges Building, Detroit, Michigan.

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 402

LEROY BRAZEE,

Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,

Defendant in Error.

MOTION TO ADVANCE.

GRANT FELLOWS,
Attorney General.
Attorney for Defendant in Error.

LANSING, MICHIGAN
WYNKOOP HALLENBECK CRAWFORD CO., STATE PRINTERS
1916

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 402

LEROY BRAZEE,

Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,

Defendant in Error.

Sir:—

You will please to take notice that a Motion to advance said cause has been made in said Court, a copy of which Motion, together with a copy of the affidavit in support thereof, is herewith served.

You will also take notice that said Motion will be brought on for hearing before the said Court at the Supreme Court room in the City of Washington on Monday, the 24th day of January, A. D. 1916, at the opening of Court on that day.

GRANT FELLOWS,
Attorney General,
Attorney for Defendant in Error.

To
Proctor K. Owens,
Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

October Term, 1915.

No. 402.

LEROY BRAZEE,

Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,

Defendant in Error.

Now comes the said defendant in error, the People of the State of Michigan, by Grant Fellows, Attorney General of said State, and moves the Court now here to advance the above entitled cause under the provisions of Subdivision 3 of Rule 26 for the reason that said cause is a criminal case being a conviction for violation of one of the criminal laws of the State of Michigan.

This motion is based upon the records and files and upon the affidavit of Grant Fellows hereto attached and made a part hereof.

Dated January 12th, 1916.

GRANT FELLOWS,
Attorney General,
Attorney for Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

October Term, 1915.

No. 402.

LEROY BRAZEE,

Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,

Defendant in Error.

STATE OF MICHIGAN, } ss.
COUNTY OF INGHAM. }

Grant Fellows being duly sworn deposes and says that the above entitled cause is a criminal case arising under the criminal statutes of the State of Michigan, said plaintiff in error, Leroy Brazee, having been convicted in the Recorders' Court in the City of Detroit for a violation of the provisions of Act 301 of the Public Acts of 1913 of the State of Michigan; that said conviction was reviewed upon exceptions before judgment in the Supreme Court of the State of Michigan and said conviction was on the 19th day of December, 1914, affirmed by the Supreme Court of the State of Michigan. (People vs. Brazee, 183 Mich. 259).

GRANT FELLOWS.

Subscribed and sworn to before me,
this 12th day of January, A. D. 1916.

ALBERT H. GRAHAM,
Notary Public in and for the County
of Ingham, State of Michigan.
My commission expires 4/19/19.

SUPREME COURT OF THE UNITED STATES.

October Term, 1915.

No. 402.

LEROY BRAZEE,

Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,

Defendant in Error.

STATE OF MICHIGAN, } ss.
COUNTY OF INGHAM. }

Horace E. Craig, being duly sworn deposes and says that on the 13th day of January, A. D., 1916, he served a true and correct copy of "Motion to Advance and Affidavit in Support thereof" on Hon. Proctor K. Owens, attorney for plaintiff in error, by placing same in an envelope addressed to Hon. Proctor K. Owens, Hodges Building, Detroit, Michigan, that being his given address, securely sealing the same and prepaying the postage thereon and by depositing said envelope in the United States post-office at the City of Lansing, Michigan.

HORACE E. CRAIG.

Subscribed and sworn to before me
this 13th day of January, A. D., 1916.

ALBERT H. GRAHAM,
Notary Public in and for the County of
Ingham, State of Michigan.

My commission expires April 19, 1919.

No. 402.

IN THE

Supreme Court of the United States

(FEBRUARY TERM, 1916)

LE ROY BRAZEE, *Plaintiff in Error,*

vs.

THE PEOPLE OF THE STATE OF MICHIGAN.

BRIEF FOR PLAINTIFF IN ERROR.

PROCTOR K. OWENS,
Attorney for Plaintiff in Error.
86 Hodges Building, Detroit, Michigan.

DETROIT:
Record Printing Co., Free Press Building, 11-17 Lafayette Boulevard.
1916.

INDEX.

CASES CITED.

No. 402.

IN THE

Supreme Court of the United States

(FEBRUARY TERM, 1916)

LE ROY BRAZEE, *Plaintiff in Error,*

vs.

THE PEOPLE OF THE STATE OF MICHIGAN.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

LeRoy Brazee, plaintiff in error, had been engaged, for a long time prior to the enactment of Act No. 301 of the Public Acts of 1913 of the Laws of Michigan, in the business of conducting an Employment Agency, as his chosen occupation, for profit, in which he earned a living for himself and family, up until the going into effect of the law aforesaid, which made it compulsory upon the plaintiff in error, in order to further engage and prosecute his lawful and chosen occupation, to execute and file a bond with the State Labor Commissioner, running to the People of the State of Michigan, in the penal sum of One Thousand Dollars of lawful money of the United States, as a guarantee that the plaintiff in error would not violate but comply with all of the conditions as is incorporated under the provisions of said law. That upon failure of the plaintiff in error to conform to all the provisions of said Act, then under the penalty clause of said Section 8 of said Act, the plaintiff in error was subjected to

heavy fines and penalties, and under Section 1 of said Act the plaintiff in error's bondsman was also subjected to an action to recover on said bond, either by the State Labor Commissioner, by suit instituted thereon against the Bonding Company, or by the person or persons claiming to be aggrieved because of any act of the plaintiff in error in not carrying out the provisions of said law.

That under the provision of Section 6 of said Act, a complaint was filed against the plaintiff in error in the Recorder's Court for the City of Detroit for the violation of the following specific provision of said Act:

> "No employment agent or agency shall send an applicant for employment to any employer who has not applied to such agent or agency for help or labor."

which said provision of said Section of said Statute plaintiff in error contends was against the federal and state constitution and therefore was void, together with all the other obnoxious sections of said statute which the plaintiff in error set forth in his motion to quash in said court, which the same was denied and is now a part of the proceedings in this court. That said case was taken to the Supreme Court upon writ of error, the plaintiff in error attacking the same through his proceedings in said court, upon the ground that the same was unconstitutional and void, for many reasons, which is now before this court. That said Supreme Court sustained the finding of the lower court, affirming the judgment of said lower court and issuing a mittimus to said Recorder's Court to proceed to a judgment in accordance with the opinion of said Supreme Court. That said judge of the Recorder's Court subsequent thereto sentenced the plaintiff in error to ninety days in the Detroit House of Correction, located in the City of Detroit and State of Michigan, (a penitentiary). That this case is here on a writ of error to review the judgment of the Supreme Court of the State of Michigan.

Supreme Court of the United States.

LE ROY BRAZEE, *Plaintiff in Error.*
vs.
THE PEOPLE OF THE STATE OF MICHIGAN, *Defendant in Error.*

ASSIGNMENTS OF ERROR.

To the Honorable Flavius L. Brooke, Chief Justice of the State of Michigan:

Now comes the said plaintiff in error and respectfully submits that in the record, proceedings, decision, and final judgment of the Supreme Court of the State of Michigan, in the above entitled matter, there is manifest error, in this, to-wit:

First. That the Court erred in holding that the provisions of Act number 301, of the Public Acts of 1913, of the General Laws of the State of Michigan, for the year 1913, are not in conflict and in violation of the provisions of the 14th amendment of the Constitution of the United States, for the State of Michigan, by and through the provisions of said Act 301, aforesaid, assumes and seeks (1) To deprive the plaintiff in error, and certain other citizens, of the United States and of the State of Michigan, of rights, privileges, and immunities secured to other citizens of the United States and of the said State; (2) To deprive the plaintiff in error, and other citizens of the United States of liberty and property, without due process of law; (3) To deprive and to deny to the plaintiff in error, and certain citizens and persons within the jurisdiction of the State of Michigan, the equal protection of the law.

Second. The Court erred in holding that by the provisions of said Act, the plaintiff in error is not deprived of rights, privileges and immunities secured to other citizens of the United States and of the State of Michigan, by the Federal Constitution and laws of the United States.

Third. The Court erred in holding that by the provisions of said Act the plaintiff in error is not deprived of his rights under Article I of Sec. 9 of the Federal Constitution.

Fourth. The Court erred in holding that by the provisions of said Act the plaintiff in error is not deprived of liberty and property without due process of law.

Fifth. The Court erred in holding that the provisions of said Act do not deny to the plaintiff in error, the equal protection of the law.

Sixth. The Court erred in holding that the said Act and the authority exercised thereunder, and thereby authorized to be exercised thereunder, is within the police powers of the legislature of the State of Michigan.

Seventh. The Court erred in holding the provisions of said Act making it unlawful for the plaintiff in error to carry on his legitimate business as a private employment agent, without first taking out a license from the State, and giving a surety bond to the State, to be within the police powers of the State.

Eighth. The Court erred in holding the provisions of said Act requiring the plaintiff in error to take out a license and to give bond, not to be an abridgment of the inalienable and constitutional right of the plaintiff in error, to pursue a lawful avocation, in a lawful way, without interference by the State.

Ninth. The Court erred in holding that Sections 3, 4 and 6 of said Act are not unreasonable, arbitrary, and do not abridge the right of the plaintiff in error to make his own lawful contracts, and do not prevent the plaintiff in error to legitimately advertise his business.

Tenth. The Court erred in holding that Section 1 of said Act belongs to that class of trades and occupations which are inherently harmful and dangerous to the public health, public morals, public safety, and is subject to the police regulations.

Eleventh. The Court erred in holding that section 5 of said Act, which limits the fees that may be charged by any person, or the plaintiff in error, in the prosecution of his business, is legal and constitutional, which said provision is a limitation on the right to contract and is a deprivation of the property of the plantiff in error, without due process of law.

Twelfth. The Court erred in holding that the provisions of said Act is not class legislation, and does not unlawfully discriminate between the business of the plaintiff in error, and the citizens who were engaged in other industrial and commercial pursuits for a livelihood.

Thirteenth. The Court erred in holding that the provisions of said Act do not cast special burdens upon the plaintiff in error, different to those engaged in other vocations and industrial pursuits.

Fourteenth. The Court erred in holding that said Act does not grant special and exclusive privileges to certain citizens, which it denies to the plaintiff in error, and to other citizens of the State.

Fifteenth. The Court erred in holding that the provisions of said Act are uniform in their operation throughout the State of Michigan, upon all citizens of the State similarly situated.

Sixteenth. The Court erred in holding that the provisions of said Act do not deprive the plaintiff in error of the right to earn a livelihood on the pursuit of a lawful and harmless occupation, and of the liberty to contract in reference to said business.

Seventeenth. The Court erred in holding that the character of the business of employment agencies, as is provided in section 1 of said Act, is such as to facilitate the practice of fraud upon the ignorant and credulous.

Eighteenth. The Court erred in holding that the business of private employment agencies, as provided in Section 1 of said Act, is in the same class and governed by the same laws regulating pawn-brokers, hawkers, peddlers and the dealers in intoxicating liquors.

Nineteenth The Court erred in holding that under the provisions of this Act the State Labor Commissioner had authority to prorate the license fees, according to the period of time covered by the license.

Twentieth. The Court erred in holding that the provisions of this Act are reasonable and not oppressive nor prohibitive.

Twenty-first. The Court erred in holding that the information filed in said cause against the plaintiff in error, was valid and not fatally defective.

Twenty-second. The Court erred in holding that said Act does not confer on the State Labor Commissioner, executive, legislative and judicial power, and that it does not confer on him arbitrary power to issue or withhold the license in his discretion, and to designate the number and qualifications of the applicants for license.

Twenty-third. The Court erred in holding "that respondent avers that said Act is unconstitutional and void for many

reasons, which we find it unnecessary to enumerate at large in this opinion."

Twenty-fourth. The Court erred in holding that this question was considered by the Supreme Court of the United States.

Twenty-fifth. The Court erred in holding with the Supreme Court of the State of Illinois, by saying, "that Court determined the Act contravened neither the State nor Federal Constitution."

Twenty-sixth. The Court erred in holding that the exact point was determined contrary to the contention of the respondent in the case of Kennedy vs. State Board of Registration, 145 Mich. 241.

Twenty-seventh. The Court erred in holding that said Act does not offend against Article V, Section 30, of the State Constitution.

Twenty-eighth. The interpretation placed upon Act number 301 of the Public Acts of 1913 of the Laws of Michigan, by the Supreme Court of the State of Michigan, is contrary to, in violation of, and in contravention of the Constitution of the United States and the Statutes thereof, which guarantees to plaintiff in error, and the citizens of the United States, and the State of Michigan, the right to choose his own lawful vocation, and to make all lawful contracts, and to have them enforced in the Courts of Justice.

Twenty-ninth. Said Court erred in not declaring Act number 301 of the Public Acts of 1913 of the General Laws of Michigan, unconstitutional and void, and setting aside and holding for naught the judgment of conviction of Plaintiff in error, rendered by the Recorder's Court of the City of Detroit, County of Wayne and State of Michigan, and entering a judgment directing that the plaintiff in error be discharged from the Detroit House of Correction (a penitentiary) where he is now detained and restrained of his liberty.

Therefore the said plaintiff in error prays that the judgment rendered by the Supreme Court of the State of Michigan, sustaining the conviction and affirming the judgment of conviction of the plaintiff in error, may be reversed, and a judgment entered in favor of said plaintiff in error, discharging him from prison, as set forth in petitioner's motions and the records and files in said cause.

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THE STATUTE.

The statute of the State of Michigan, Act No. 301 of the Public Acts of 1913, which imposes the penalties and punishment for violation of its provisions, and which is herein set forth, is contrary to the Fourteenth Amendment of the Constitution of the United States, as being a denial of due process of law and equal protection of law. Said statute, except the title, is as follows, to-wit:

"The People of the State of Michigan Enact:

"Section 1. No person, firm or corporation in this state shall open, operate or maintain a private employment agency where a fee is charged to persons seeking employment, without first obtaining a license for the same from the Commissioner of Labor, and the fee for such license shall be twenty-five dollars per annum, except in cities over 200,000 population, where it shall be one hundred dollars per annum. Every license shall be void after the 31st day of December of the year in which it was issued. The form of the license shall be fixed by the Commissioner of Labor and it shall be non-transferable. The license may be revoked by the Commissioner of Labor whenever in his judgment, after a full hearing, the licensed agency shall have violated any of the provisions of this Act. The Commissioner of Labor is hereby charged with the enforcement of the terms of this Act and empowered to make such rules or regulations as are consistent with it, and aid in its enforcement, and he shall direct copies or excerpts of this Act to be kept conspicuously posted in every licensed agency. The Commissioner of Labor shall turn in to the State Treasurer all fees collected under this Act.

"Section 2. The Commissioner of Labor, before granting a license, shall require each applicant to furnish a surety bond in the penal sum of one thousand dollars, conditioned that the obligor will not violate any of the provisions of this act. The Commissioner of Labor is authorized to cause an action to be brought on said bond in the name of the people of the state of Michigan, for the violation of any of its conditions. If any person shall be aggrieved because of the violation by such licensed agency of any provisions of this Act, such person may maintain an action in his own name,

on the bond of said employment agency, in any court having jurisdiction of the amount claimed.

"Section 3. It shall be the duty of every licensed agency to keep a register in which shall be truthfully entered the date of application, age, sex, nativity, trade or occupation, name and address of every person who applies for employment at such agency, the amount of the fee charged and the wages to be paid. Such licensed agency shall also keep a register in which shall be truthfully entered the name and address of every person who applies for help at such agency, the place of supposed employment, the nature of the work to be done, and the wages offered.

"Section 4. Every licensed agency shall issue a receipt to each person seeking employment, who has paid a fee, which receipt shall contain the name and address of the agency issuing it, together with all of the information regarding the particular transaction hereinbefore required to be entered in both registers of the agency. Such agency shall also issue a receipt to each person seeking employment who has paid a fee for registry in such agency.

"Section 5. The entire fee or fees for the procuring of one situation or job, and for all expenses incidental thereto to be received by any employment agency from an applicant for employment, at any time, whether for registration or other purposes shall not exceed 10% of the first month's wages; such 10% shall be determined by the monthly rate offered by the applicant for help, regardless of the time during which the applicant for employment remains at the employment procured him. Where a registration fee is charged, if the applicant, through no fault of his own, does not secure, through the employment agency to which the fee has been paid, within one month, the employment applied for, said agency shall repay to said applicant, upon demand, one-half of the full amount of the registration fee paid. No registration fee shall exceed the sum of one dollar.

"Section 6. No employment agent or agency shall send an applicant for employment to an employer who has not applied to such agent or agency for help or labor. Nor shall any licensed agency fraudulently promise or deceive, whether through a false notice or advertisement, or other means, any applicant for help or employment with regard to the service to be rendered by such licensed agency, and every such agency

shall be liable civilly to any person who is led to expend money uselessly for transportation or other purposes through the misrepresentation or false promises of such agency.

"Section 7. No employment agency or person connected therewith shall direct any person applying for employment to any house of prostitution or immoral resort. No such licensed agency shall be conducted in or in connection with any place where intoxicating liquors are sold.

"Section 8. Any person who violates or omits to comply with any provision of this Act, or who interferes in any manner with the Commissioner of Labor or any of his deputies in its enforcement shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment for not less than ten nor more than ninety days, or by both such fine and imprisonment in the discretion of the Court.

Approved May 13, 1913."

That said Statute is in contravention of the constitutional rights of the plaintiff in error, guaranteed to him under the 14th Amendment to the Constitution of the United States, which provides,

> "That no state shall abridge the rights, privileges or immunities of the citizens of the United States."

The rights of the plaintiff in error, so guaranteed thereunder, are property rights within the meaning of the provision of the 14th Amendment and the Constitution of the United States, prohibiting any state from depriving any person of life, liberty or property, without due process of law, or denying to any person within its jurisdiction the equal protection of the law.

The validity of such laws as the one in controversy was considered by the Supreme Court of the State of California in the case of ex-parte C. E. Dickey on habeas corpus, 144 Cal. 234. A brief statement of the facts in said case are as follows: A writ of habeas corpus directed to the sheriff of the city and county of San Francisco, holding petitioner under judgment of the police court of said city and county, George Cabaniff, Judge. By this writ the petitioner attacks the constitutionality of an Act of the Legislature defining

the duties and liabilities of employment agents, making a violation of the Act a misdemeanor and fixing the penalties therefor, (Statts. 1903 P. 14), and in particular Section 4 of this Act under which he was charged with and convicted of misdemeanor.

Section 4 reads as follows:

> "It shall be unlawful for an employment agent in the State of California to receive, directly or indirectly, for registration, made or for information, or assistance such as is described in Section 2 hereof, any money or other consideration which is in value in excess of 10% of the amount earned or prospectively to be earned by the person for whom such registration is made, or to whom such information is furnished through the medium of the employment regarding which such registration, information or assistance is given during the first month of such employment; provided, that said value shall not be in excess of 10% of the amount actually prospectively to be earned in such employment when it is mutually understood by the agent and person in this section mentioned at the time when said information or assistance is furnished, that said employment is to be for a period of less than one month."

The Court, in going over the various constitutional questions raised against the validity of said law, in its opinion hereinafter fully set forth, stated as follows:

> "Whether or not the Act be a valid exercise of the police power is the single question here calling for determination.
>
> "As to the scope of the legislative exercise of the police power, the Supreme Court of the United States, in the recent case of Holden vs. Hardy, 169 U. S., 366, discussing the questions of the right of one to pursue an ordinary and legitimate vocation to acquire property and to make contract to that end, says: 'This right to contract, however, is itself subject to certain limitations which the State may lawfully impose in the exercise of its police powers. While this power is inherent in all government, it has doubtlessly been greatly expanded in its application during the past century, owing to an enormous increase in the number of occupations which are dangerous or so far detrimental to the health of employes as to demand special

precautions for their well-being and protection, or safety of adjacent property. While this court has held that the police power cannot be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety or morals or the abatement of public nuisances, and a large discretion is necessarily vested in the legislature to determine not only what the interest of the public require, but what measures are necessary for the protection of such interest.' Judge Cooley on Constitutional Limitations, 7th Edition, page 837, declares: 'The limit to the exercise of the police power in these cases must be this: The regulation must have reference to the comfort, safety, or welfare of society.' In the same connection with this court has said (Sonora vs. Curtin, 137 Cal., 583): 'A police regulation or restraint is for the purpose of preventing damage to the public or a third person. There are certain lines of business and certain occupations which require police regulations because of their peculiar character, in order that harm may not come to the public, or that the threatened danger may be averted. Where the profession or business is not dangerous to the public, either directly or indirectly, it cannot be subjected to any police regulation whatever which does not fall within the power of taxation for revenue.' It appears, therefore, that the due exercise of the police power is limited to the preservation of the public health, safety and morals, and that the legislation which transcends these objects, whatever other justification it may claim for its existence, cannot be upheld as a legitimate police regulation.

"The business in which this defendant is engaged is not only innocent and innocuous, but is highly beneficial at tending the more quickly to secure labor for the unemployed. There is nothing in the nature of the business, therefore, that in any way threatens or endangers the public health, safety or morals. Nor, indeed, is the purpose of this statute to regulate in these regards or in any of them. The declared purpose of the plain effect of the above-quoted section is to limit the right of an employment agent in making contracts aright free to those who follow other vocations, and arbitrarily to fix the compensation which he may receive for the services which he renders.

"Here, then, is laid down a most drastic rule governing the conduct of a man in the prosecution of a harm-

less, legitimate and beneficial business. Under the Constitution of the United States and this State the protection guaranteed in the possession of property and in the pursuit of happiness is extended, as of necessity it must be, to cover the right to acquire property, and the right to acquire property must and does include the employment of proper means to that end. Says Judge Cooley, Constitutional Limitations, 7th Edition, page 889: 'The general rule undoubtedly is that any person is at liberty to pursue any lawful calling and to do so in his own way, not encroaching on the rights of others. This general right cannot be done away.' And this court has said (ex parte Newman, 9 Cal., 517): 'The right to protect and possess property is not more clearly protected by the constitution than the right to acquire it. The right to acquire must include the right to use the proper means to attain the end. The right itself would be impotent without the power to use its necessary incidents. The legislature, therefore, cannot prohibit the proper use of a means of acquiring property, except the peace and safety of the State require it.' In strict accord with this is the language of the Supreme Court of the United States in Holden vs. Hardy, 169 U. S., 336: 'As the possession of property, of which a person cannot be deprived, doubtless implies that such property may be acquired, it is safe to say that a state of law which undertakes to deprive any class of persons of the general power to acquire property would also be obnoxious to the same provision (due process of law). Indeed, we may go a step further and say that as property can only be legally acquired as between living persons by contract, a general prohibition against entering into contracts with respect to property or having as their object the acquisition of property, would be invalid.' And says Judge Cooley, speaking of this same subject-matter: 'The doubt might also arise whether a regulation made for one class of citizens, entirely arbitrary in its character and restricting their rights, privileges or legal capacities in a manner before unknown to the law, could be sustained, notwithstanding its generality. Distinctions in these respects must rest upon some reason upon which they can be defended—like the want of capacity in infants and insane persons, and if the legislature should undertake to provide that persons following some specified lawful trade or employment should have no capacity to make contracts or to receive conveyances or to build

such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the act would transcend the due balance of legislative power, even though no expressed constitutional provision could be pointed out with which it would come in conflict. To forbid to an individual or a class the right to acquisition or enjoyment of property in such manner as should be permitted to the community at large, would be to deprive them of liberty in particulars of primary importance to their "pursuit of happiness;" and those who should claim a right to do so ought to be able to show a specific authority therefor instead of calling upon others to show how and where the authority is negatived.'

"The application of these principles to the statute under consideration leads to the following irresistible conclusion: The petitioner is engaged in a harmless and beneficial business. As a part of his 'property' in that business are the services that he renders in obtaining employment for those seeking it. It is not compulsory upon anyone to employ him, and who so seeks to avail himself of his services is at liberty to reject them if the terms of the contract for compensation are not satisfactory to him. This right of contract common to the followers of all legitimate vocations is an asset of the petitioner in his chosen occupation, and, as has been said, is a part of the property in the enjoyment of which he is guaranteed protection by the constitution. By the Act in question, he is arbitrarily stripped of this right of contract and deprived of his property, and left in following his vocation and in the pursuit of his livelihood circumscribed and hampered by a law not applicable to his fellow-men in other occupations. Such legislation is of the class discussed by Judge Cooley in the paragraph above quoted: 'Entirely arbitrary in its character and restricting the rights, privileges or legal capacities' of one class of citizen 'in a manner before unknown to the law.' For such legislation as he very justly adds those who claim its validity should be able to show a specific authority therefor, 'instead of calling upon others to show when and how the authority is negatived.'

"And where, it may be asked, could the line be drawn if the legislature, under the guise of the exercise of its police power, should thus be permitted to encroach upon the rights of one class of citizens? Why should

not the butcher and the baker, dealing in the necessaries of life, be restricted in their right of contract and, consequently, in their profits to 10, 5 or 1 per cent? Why should not the contractor, the merchant, the professional man be likewise subjected to such paternal laws, and why not the legislature fix the price and value of the services of labor? The law is clearly one of those the danger of whose enactment was foreshadowed by this court in ex parte Jentzsch, 112 Cal., 468, when it said: 'So while the police power is one whose proper use makes most potently for good, in its undefined scope and inordinate exercise lurk no small danger to the republic. For the difficulty which is experienced in defining its just limits and bounds affords a temptation to the legislature to encroach upon the rights of citizens with experimental laws, none the less dangerous because well meant.'

We have not, in this discussion, been called upon to consider adjudication from any sister State, for the reason that no such enactments as this have been passed by their legislature, or, if passed, have come before their courts for review. We have been referred to no cases by the respondent. In Illinois, however, an act not dissimilar in character was passed, requiring that all coal produced in the State should be weighed on scales at the mine, and that such weight should be taken as a basis for computing the wages of the operators and prohibiting the owners and employes from contracting for labor on any other basis. In Millet vs. People, 117 Ill., 294, the defendant was convicted of having failed to furnish a track scale as provided in the act, and he appealed. In stating the proposition, the Supreme Court of Illinois said: 'The question is thus presented whether it is competent for the general assembly to single out owners and operators of coal mines as a distinct class and provide that they shall bear burdens not imposed on other owners of property or employers of laborers, and prohibit them from making contracts which it is competent for other owners of property or employers of labor to make.' The court, in its discussion, quoted Judge Cooley as above, and in declaring the law invalid, said: 'What is there in the condition or situation of the laborer in the mine to disqualify him from contracting in regard to the price of his labor, or in regard to the mode of ascertaining

the price? And why should the owner of the mine or the agent in control of the mine not be allowed to contract in respect to matters as to which all other property owners and agents may contract?'

"There are but two classes of legislation standing upon the books which bear any similarity to the law here under consideration, but an examination of these classes discloses that the similarity is superficial and not substantial. The first is found in the laws against usury, not recognized in this State saving in the particular case of pawnbrokers, who are forbidden to charge more than 2% a month's interest. But usury laws, without regard to their wisdom, are a heritage to us from the common law, which we have adopted as a basis of our jurisprudence, and had their origin in the somewhat spiritual and theological notion that it was against the law of God that a thing which was by nature unfruitful should be made to bear fruit, and from time immemorial has been upheld as police regulation (ex parte Lichtenstein, 67 Cal., 329).

"The second is the law of Congress, apparently impairing the right of contract in declaring that no agent, attorney or other person engaged in preparing, presenting or prosecuting any claim under the provisions of the pension act shall demand, receive or retain for his services any sum greater than $10, and making a violation of the Act a misdemeanor. But the constitutionality of the act is upheld by the Supreme Court of the United States upon the expressed ground that no pensioner has a vested legal right to his pension. The pensions are the bounties of the Government, which Congress has a right to give, withhold, distribute or recall at its discretion, and being at liberty to give or withhold, 'may prescribe who shall receive it and determine all the circumstances and conditions under which any application therefor shall be prosecuted. No man has a legal right to a pension, and no man has a legal right to interfere in the matter of obtaining pensions for himself or for others.' (Frisbee vs. United States, 157 U. S., 160.)

"For the foregoing reasons, the provisions of the act under consideration is declared void and the prisoner is discharged from custody.

McFarland, J.; Van Dyke, J.; Angellotti, J., concurred."

The reason for setting forth the opinion of the court in the above case in full is because of the fact that the statute here in controversy is largely similar to the statute in California, especially Section 5 of our statute, when compared with Section 4 of the California statutes.

In the case of Yickwo vs. Hopkins, Sheriff, 118 U. S. Rep., 356, a brief statement of facts are that the petitioner petitioned for a writ of habeas corpus, alleging that he was illegally deprived of his personal liberty by the defendant sheriff of the City and County of San Francisco. The sheriff made a return to the writ that he held the petitioner in custody by virtue of a sentence of the police judge No. 2, of the City and County of San Francisco, whereas others found guilty of violation of certain ordinances of the Board of Supervisors of that county were adjudged to pay a fine of $10, and in default of payment to be imprisoned at the rate of one day for every dollar fined, until said fine should be satisfied, and commitment in consequence of non-payment of said fine. Said ordinance under which the petitioner was convicted is set forth in a decision of the court. The court, in discussing the various questions raised therein, near the top of page 362, said:

> "If it is competent for the board of supervisors to pass a valid ordinance prohibiting the inhabitants of San Francisco from following an ordinary, proper and necessary calling within the city and county, except at its arbitrary and unregulated discretion and special consent, and it can do so if this ordinance is valid, then it seems to us that there has been a wide departure from the principles that have heretofore been supposed to guard and protect the rights, property and liberties of the American people, and if by an ordinance general in its terms and form, like the one in question, by reserving an arbitrary discretion in the enacting body to grant or deny permission to engage in a proper and necessary calling, a discrimination against any class can be made in its execution, thereby evading and, in effect, nullifying the provision of the federal constitution, then the insertion of provisions to guard the rights of every class and person in that instrument was a vain and futile act."

This court, in the above case, near the center of page 366, in discussing the opinion handed down by the Supreme Court of California relative to its construction of the ordinance, said:

"We are not able to concur in that interpretation of the powers conferred upon the supervisors. There is nothing in the ordinance which points to such a regulation of the business of keeping and conducting laundries. They seem intended to confer, and actually do confer, not a discretion to be exercised upon a consideration on the circumstances of each case, but a naked and arbitrary power to give or withhold consent not only as to places but as to persons. So that, if an applicant for such consent, being in every way a competent and qualified person, having complied with every reasonable condition demanded by any public interest, should, failing to obtain the requisite consent of the supervisors to the prosecution of his business, apply for redress by the judicial process of mandamus to require the supervisors to consider and act upon his case, it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent, without reason and without responsibility. The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary and acknowledges neither guidance nor restraint."

In the above case, near the center of page 367, the court, in its further discussion of the questions therein involved, and the invalidity of said ordinances under the 14th Amendment of the Constitution of the United States, said:

"That it was undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but the equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights, that all persons should be equally entitled to pursue their hapiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their personal property, the preservation and redress of wrong, and the enforcement of contracts; that no impediment should be interposed to the pursuit of anyone except as applied to the same pursuits by others under like circumstances; that no greater burden should be laid upon one or laid upon others in the same calling and conditions, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for

like offenses. Class legislation, discriminating against some and favoring others, is prohibited."

In the above case, on page 369, this court, in further discussing the 14th Amendment of the Constitution of the United States, says:

> "The 14th Amendment to the Constitution of the United States is not confined alone to the protection of citizens. It says: 'Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.' These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws. It is accordingly enacted by Section 1977 of the Revised Statutes of the United States that 'All persons within the jurisdiction of the United States shall have the same right in every State and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, and shall be subject to like punishment, pain, penalties, taxes, license and exaction of every kind, and no other."

The court, in the above case, near the bottom of page 369, in its further discussion, said:

> "It is contended on the part of the petitioner that the ordinances for the violation of which they are severally sentenced to imprisonment are void on their face as being within the prohibitions of the 14th Amendment, and in the alternative, if not so, that they are void by reason of their administration operating unequally, so as to punish in the present petitioner what is permitted to others as lawful, without any distinction of circumstances, and unjust and illegal discrimination, it is claimed, which, though not made expressly by the ordinances, is made possible by them."

The Court, in the above case, on page 369, near the bottom of said page, further says:

> "When we consider the nature and the theory of our institutions and government, the principles upon which

> they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power."

The court, in the above case, near the bottom of page 370, in its further discussion of the fundamental rights of life, liberty and property, said:

> "But the fundamental right to life, liberty and pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under a reign of just and equal laws, so that in the famous language of the Massachusetts Bill of Rights the government of the commonwealth may be a government of laws and not of men. For the very idea that one man may be compelled to hold his life or the means of living, or any material right essential to the enjoyment of life at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

The court, in the above case, near the bottom of page 372, in its further discussion of arbitrary laws and their effects, says:

> "It lays down no rules by which its impartial execution can be secured, or partiality and oppression prevented. It is clear that giving and enforcing these notices may, and quite likely will, bring ruin to the business of those against whom they are directed, while others from whom they are withheld may be actually benefited by what is thus done to their neighbors; and when we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism or other improper influences and motives, easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or to comment upon the injustice capable of being brought under cover of such a power, for that becomes apparent to every one who gives to the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void."

The court, in the above case, near the bottom of page 373, in its further discussion of arbitrary laws, says:

> "Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an unequal hand, so as to practically make unjust and illegal discriminations between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Constitution of the United States. This principle of interpretation has been sanctioned by this court in the cases of Henderson vs. Mayer of New York, 97 U. S., 259; Chylung vs. Freeman, 92 U. S., 275; ex parte Virginia, 100 U. S., 299; Neal vs. Delaware, 103 U. S., 370; and Soon Hing vs. Crowley, 113 U. S., 703."

The plaintiff in error contends that the various constitutional questions raised by the court in the above case are very applicable to the case at bar, in that said ordinance was class and arbitrarily enforced and directed against a special class of citizens engaged in a special business, that of the laundry business, while the Michigan statutes here in controversy applies to only a special class, and arbitrarily enforced, and goes further than that and abridges the right and privileges of the citizens of the State of Michigan in the prosecution of his own innocent, innocuous, harmless and beneficial business, and restricts his right and power to make his own lawful contracts, which the same underlying principle involved in the above case, and the application of the various constitutional questions relative thereto applies with equal force in the case at bar, in that if the legislature is vested with the power, then it can, under the pretext, enact most any kind of a law regulating the personal conduct of the citizens, under the claimed right that it comes under the police power of the State, and there would be no end to the paternal laws abridging the right of the citizen to prosecute his own lawful business and regulating the personal conduct of each and every citizen in Michigan, and for these reasons we contend that said Act 301 of Public Acts of 1913 is unconstitutional and void in that if such a law as the one here in controversy is carried to its logical conclusion, it would ultimately destroy popular government.

In the case In re Grice, 79 Fed., 627, the facts in brief are that William Grice filed a petition for writ of habeas corpus to release him from prison, and the same was heard by the

court, and after a long and exhaustive opinion by the court in said cause it declared the law invalid and discharged the prisoner.

The court, in discussing the various questions relative to the validity of such laws and the right and privilege of the citizen to follow his own lawful, chosen vocation, and to make his own lawful contracts relative thereto, on page 640, in part, said:

> "Neither the State nor the national legislature possesses any right to limit these natural privileges of contracting or conducting business. Any law which undertakes to abolish these rights, the exercise of which does not involve infringement upon the rights of others, or to limit the exercise thereof beyond what is necessary to provide for the public welfare and general security, cannot be included in the police power of the government. The right of liberty embraces the right of man to exercise his faculties and follow any lawful avocation for the support of life. 'Liberty,' in its broad sense, as understood in this country, means a right not only of freedom from servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation. The legislature cannot, under the pretense of exercising the police power, or any other claim or pretense, enact laws prohibiting harmless acts not concerning the health, safety or welfare of society, and the courts may examine into and annul such illegal legislation."

The court, in the above case, in its further discussion of the liberty of the citizen to contract, on page 641, says:

> "One of the most sacred rights of liberty is the right to contract. All of the rights of contract which are necessary for the carrying on of ordinary business affairs are protected by the constitution and are not capable of being restrained by legislative action. It is part of the natural and civil liberty to form business relations free from the dictation of the State; that a like freedom should be secured and enjoyed in determining the condition and terms of the contract which constitutes the base of the business relation or transaction. It is therefore the general rule that a man is

> free to ask for his wares or his services whatever price he is able to get, and others are willing to pay. If there is one thing more than any other public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and their contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by courts of justice."

The court, in the above case, page 642, in its further discussion of the questions therein involved, and especially the criminal provision of said statute, says:

> "It makes criminal the making or carrying out of any contract, obligation or agreement by which two or more persons, firms or corporations combine themselves not to sell any article below a standard or common figure. An agreement between two or more persons forms a combination between them. Next it is also made criminal for two persons to agree to limit or reduce the production of commodity."

The plaintiff in error maintains that the opinion of the court as above stated, relative to the criminal provision of said statute, applies with equal force to the criminal provision as is incorporated in Act 301 of the Public Acts of 1913, in that it restricts the right and privilege of the plaintiff in error to make his own contracts with persons seeking employment, and correspondingly abridges the right to contract of the applicant who is seeking position through the means furnished by the plaintiff in error, and for the violation of such provision the plaintiff in error is subjected to criminal punishment and his license forfeited and suit brought upon the bond for the violation of such provision, but the applicant is not subjected to any penalty, which we maintain that such penal statutes as incorporated in the Michigan Act is unconstitutional and void, as being discriminatory and not equally enforced against citizens engaged in other lawful vocations as against the plaintiff in error.

The court, in the above case, in its discussion of the rights of property and the rights and privileges of the citizen to make his own contract under the Constitution of the United States, near the bottom of page 646, said:

> "Discrimination may be as potent against the citizen in the direction of his property as is aimed directly against himself personally. The right to hold or sell

> property and to make agreements and contracts concerning it, which may be believed by the owner to be for his betterment, is the most essential right of property. With some citizens this right is taken away; with others it is encouraged."

The court, in its further discussion of the question therein raised, on page 650, near the bottom of the page, said:

> "The rights of every individual must stand or fall by the same rule of law that governs every other member of the body politic or land under similar circumstances, and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. Such abuses resulted in the adoption of the Magna Charta in England, which is and for centuries has been the foundation of English liberty. Its infraction was a leading cause why we separated from that country, and its value as a fundamental rule for the protection of the citizen against legislative usurpation was the reason of its adoption as a part of our constitution."

The plaintiff in error contends that the rule of law applied in the above case by the Court, upon the various questions therein involved relative to the rights of individual citizens and the protection guaranteed to them under the Constitution of the United States in the prosecution of their lawful and chosen avocation, is very applicable to the case at bar, in that the petitioner, by said Act 301 of the Public Acts of 1913 of the Laws of Michigan, is absolutely stripped of his rights to contract, deprived of his property without due process of law, and because of the vicious, arbitrary, criminal and discriminatory provisions as is incorporated in said act, and the arbitrary and impartial enforcement of its said provisions under the power of one man, the State Labor Commissioner, it has been the means of not only destroying the plaintiff in error's business, but has been a total loss in his property and business in the approximate sum of $3,000.

The plaintiff in error contends that such law does not come under the police power of the State, and it is not within the power of the Legislature to enact such a law, which is purely arbitrary, class, and arbitrarily enforced by the State Labor Commissioner, which makes it the more dangerous because of the fact that the State Labor Commissioner, under

its provisions, is vested with legislative, executive and judicial power to, at his will and option say, who shall engage in this lawful business, which gives him the exclusive power under its provisions to reward his friends and punish his enemies.

In the case of Butcher's Union Slaughter House & Live Stock Co. vs. Crescent Life Stock & Slaughter House Company, 111 U. S., 746, a brief statement of facts are that the Legislature of Louisiana, in 1879, granted an exclusive privilege to the appellee for stock and slaughter houses at the City of New Orleans for 25 years. The appellee as plaintiff below filed a bill in the Circuit Court to restrain the appellant from exercising the privileges thus conferred. A preliminary injunction was granted and finally made perpetual, and this decree the defendant appealed. The Court, in its discussion of the statute, granting the privilege, held that it created a monopoly of the business and was an infringement upon the constitutional rights of all other persons desiring to engage in similar business, and declaring it was against the common and inherent rights of the appellant, and in its opinion in part says:

> "The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, have been followed in all communities from time immemorial, and must therefore be free in this country to all alike upon the same conditions. The right to pursue them without let or hindrance except that which is applied to all persons, same age, sex and conditions, is a distinguishing privilege of the citizens of the United States, and an essential element of that freedom which they claim as their birthright. It has been well said that the property which every man has in his own labor, as it is the original foundation of all other properties, so it is the most sacred and inviolable."

The Court, in its further discussion of the question therein raised, said:

> "That said law compels more than a thousand persons to abandon their regular business and surrender it to a corporation, to which was given an exclusive right to pursue it for 25 years. What was lawful to these thousand persons the day before the law took effect, was unlawful the day afterwards. * * * It cannot be that a State may limit to a specified number of its people the right to practice law, the right to practice medicine, the right to preach the Gospel, the right

> to till the soil or to pursue a particular business or trade, and thus parcel out the different parties various vocations and callings of life."

We maintain that the vocation which the plaintiff in error was following is an innocuous, beneficial and harmless business, and instead of being either dangerous or harmful to the general public, it is specially beneficial in that it enables the employe, who is seeking employment, to more readily procure a position than he could otherwise do, other than through the line of business conducted by the plaintiff in error.

We further contend that while in the above case cited the law granted the privilege of an absolute monopoly to one corporation in New Orleans to conduct the slaughter house business, yet the principle involved in the case above cited is involved in the case at bar, in that it is immaterial whether the monopoly be vested in one corporation or a hundred corporations, the principle is just the same, and the same applies with equal force to the case at bar. While the State Labor Commissioner, under the provisions of the act here in controversy may, at his will, grant an unlimited amount of licenses, to applicants to engage in the employment agency business, yet he may withhold, at his will, or grant a very limited number of licenses to applicants in the same business, and thereby create a monopoly of the business and thereby reward his friends and punish his enemies, in that under and by virtue of the provisions of said act the State Labor Commissioner is vested with legislative, executive and judicial power to fix the number of licenses to be granted, to make the rules governing the same, and empowered to enforce all of its provisions in the criminal courts for the non-compliance and violation of the licensees, licensed under said law, and in addition thereto, gives him further power, under Section 1, to sue and recover upon the bond which is required of the licensee under its provisions, as a condition precedent to him being granted a license, which is in direct contravention of the Fourteenth Amendment of the Constitution of the United States. The Court, in the above case, in its further discussion of the question involved, near the center of page 765, says:

> "That this law certainly does deprive the citizen, to a certain extent, of his liberty; for it takes from him the freedom of adopting and following the pursuit which, as already intimated, is a material part of the liberty of the citizen. And if a man's right to his calling is property, as many maintain, then those who

> had already adopted the prohibited pursuit in New Orleans, were deprived by the law in question of their property, as well as their liberty, without due process of law. And further, under the constitution no State shall deny to any person the equal protection of the law. If it is not a denial of equal protection of the laws to grant to one man or set of men the privilege of following an ordinary calling in a large community, and to deny it to all others, it is difficult to understand what would come within the constitutional provision."

Plaintiff in error contends that the same rule of law and the same principle as laid down in the case above cited are on all fours with the case at bar, and the same objectionable element as is incorporated in the above law is incorporated in the Michigan statutes, and more or other additional unreasonable arbitrary and class provisions in the Michigan law than in the law above cited by the Court. That the plaintiff in error was engaged in the business of conducting an employment agency for many years prior to the enactment of the Michigan statute, and had built up a large and lucrative business, through his skill and enterprise, until the enactment of said statute through its arbitrary provisions and its enforcement through the arbitrary power of the State Labor Commissioner, the plaintiff in error has been humiliated and disgraced by a criminal prosecution against him under the provisions of said statute by the State Labor Commissioner, and his business and property totally destroyed, which the plaintiff in error contends such a law is against the State and Federal constitution and is void.

In the case of People ex rel. Valentine vs. Berrien County Circuit Judge, 124 Mich., 664, the facts, in brief, are that William B. Thompson was arrested charged with a violation of Act No. 251 of the Public Acts of 1899, because he had failed to file a bond and had not procured a license to solicit farm products for a firm in Chicago. The Court quashed the information, holding the law to be unconstitutional. The act is entitled: "An Act to License and Regulate Commission Men and Brokers." Justice Grant, in rendering the decision, in discussing the various questions raised therein relative to the constitutionality of said statute, in part said:

> "The Act is not aimed at brokers in the ordinary meaning of that word. It is not aimed at commission merchants generally. It is aimed solely at commission merchants who engage in the business of selling farm

products for producers upon commission. It provides that such a merchant shall pay a fee and execute a bond as a condition precedent to doing business.

"The condition of the bond is the honest and faithful performance of this contract. The business of buying and selling on commission has existed ever since commerce began. There are, and always have been, dishonest men engaged in it, as there are and always have been in every other branch of business. There are and always have been dishonest sellers who have packed their produce in such a manner as to deceive. It would be as reasonable to require the latter to give bonds to properly pack their produce. In every such case the common law provides an ample remedy for redress to the injured party for breach of the contract. There is no more reason why commission merchants should pay a license fee and execute a bond to pay his debts and to do his business honestly than there is that any other merchant should pay a like fee and file a bond to properly do his business and pay his debts.

"The business requires no regulation any more than any other mercantile pursuit. There is nothing in it hostile to the comfort, health, morals or even inconvenience of the community. It is carried on by private persons in private buildings, and in a manner no different from that in which a merchant selling hardware, groceries or dry goods carries on his business.

"The law can find no support in the police power inherent in the State. It is not like the liquor traffic, which, under the decisions of every court, is subject to the police power because of the injury it does to the health, the morals and peace of the community, and may be prohibited altogether. Neither is there anything in it which requires regulation, as do hack drivers, peddlers, keepers of pawnshops and the like.

"The Legislature of this State is not empowered by the constitution to regulate contracts between its citizens who are engaged in legitimate commercial business, or to require any class of persons to pay a fee for the right to carry on business or to give a bond to perform their contracts, which other parties may choose to make with them. The constitution guarantees to citizens the right to engage in lawful business, unhampered by legislative restrictions where no restrictions are required for the protection of the public. We are compelled to hold this law void because (1) it is class legislation and (2) it is an unjustifiable interference

> with the right of citizens to carry on legitimate business; it is unnecessary to discuss the other question raised. The writ is denied. The other justices concurred."

We contend that this case is directly in point with the case at bar, in that there is no difference between a commission merchant or a broker engaged in the business of selling farm products, than that of the plaintiff in error engaged in selling his services and charging for his skill in securing employment for the unemployed. The business of securing men employment has existed from the beginning of time, and therefore we contend that the case above cited is applicable to this case here in controversy, and that said Act 301 of the Public Acts of 1913 of the Laws of Michigan, with its many unreasonable, arbitrary and unconstitutional provisions, is against the plaintiff in error's constitutional rights, abridging the right and liberty and power of the citizen to contract and prosecute a lawful business.

In the case of State vs. P. L. Moore, 113 N. C., 697, the Court in part said:

> "That uniformity in its legal and proper sense is inseparably incident to the power of taxation, whether applied to taxes on property or to those on trades and professions, etc.
>
> "That it must be manifest from these provisions that the principle of uniformity is entirely disregarded, and that if the act is to be considered as an exercise of the taxing power of the Legislature, it must, under the repeated decisions of this Court, be declared unconstitutional and void.
>
> "A tax now uniform and properly understood would be so inconsistent with natural justice and with the intent which is apparent in the section of the constitution above cited in this case, that it would be restricted as unconstitutional."

In the case of W. S. Moore et al. vs. City of St. Paul, 48 Minn., 332, was an ordinance requiring the fee of $150 to be paid for a license for one year to carry on the business of an intelligence office or an employment office for males. The Court in part said:

> "That under the provisions of this ordinance, no matter what time of the year the application is made, the applicant is required to pay the fixed and invariable

sum of $150 for a license for the unexpired term of the current year; that is, until the first of the following January. For example: If the application is made January 1st, he has to pay only $150 for a license for a full year; but if made July 1st, he has to pay the same amount for a license for six months; or if the application is not made until December 30th, he will still have to pay $150 for a license for a single day.

"But the Common Council had no such authority to adopt any such arbitrary and unequal scale of charges as is provided by this ordinance. The ordinance is clearly void."

This case is on all fours with the case at bar. In Section 1 of Act No. 301, Public Acts of 1913, here in controversy, the same unreasonable and arbitrary and unequal charges are required of applicants for license as is required in the case above cited, which is in contravention of the plaintiff in error's rights, in that it confiscates his property without due process of law, in that he does not receive a fair and just compensation therefor.

In the case of Joseph W. Chaddock, 75 Mich., 527, the Court held:

"That law will not allow the right of property or business to be invaded under the guise of the police regulation for the benefit of the public health or good order when it is manifest that such is not the object or purpose of the enactment or bylaw."

In the case of Missouri vs. Loomis et al., 115 Mo., 307, a brief statment of the facts in this case are that the Legislature enacted a law making it a misdemeanor for any corporation, person or firm engaged in manufacturing or mining to issue in payment of wages of its laborers any order, check, memorandum, token or evidence of indebtedness payable otherwise than in lawful money of the United States. The Court, in discussing the provisions of said statute, near the top of page 313, says:

"That it is now axiomatic that everything which may pass under the form of an enactment is not to be considered the law of the land."

Speaking of these words, Mr. Justice Johnson said:

"They were intended to secure the individual from the arbitrary exercise of the powers of government

and restrained by the established principles of private rights and distributed justice.

"From the foregoing description and definition, 'due process of law' or its equivalent 'law of the land,' it must be evident that this constitutional safeguard condemns arbitrary, unequal and partial legislation, and it is equally clear that the right to make contracts and have them enforced as others may, is one of the rights so secured to every citizen."

We contend that the rules of law laid down in the Missouri case applies with equal force in the case at bar, in that the arbitrary and unreasonable conditions incorporated in the statute here in controversy, which enables the State Labor Commissioner to say who shall engage in this lawful business, and to make the rules and regulations of the said business and the exacting of $100 licensees fees in all cities of over 200,000, and in all cities of under 200,000 population $25 license fees, makes this statute not only arbitrary and unreasonable and unconstitutional, but that said provision is purely and simply class legislation. The Court, in further discussing the constitutional questions therein raised against the validity of said law, said:

"Liberty, as we have seen, includes the right to contract as others may, and to take that right away from a class of persons following lawful pursuits is simply depriving said persons of the time honored right which the constitution undertakes to secure to every citizen. Applying the principles of constitutional law before stated, we can come to no other conclusion than this: That these sections of the statute are utterly void.

"They attempt to strike down one of the fundamental principles of constitutional government. If they can stand, it is difficult to see an end to such legislation, and the government becomes one of special privileges instead of a compact, 'to promote the general welfare of the people.' We base our conclusions on the broad ground that these sections of the statute are not 'due process of law' within the meaning of the constitution. They are utterly unconstitutional and void, inasmuch as by them an attempt has been made by the Legislature to do what in this country cannot be done; that is, prevent persons who are sui juris from making their own contracts."

We contend that the plaintiff in error, under the Michigan statute here in controversy, is placed in the same position relatively as the persons operating under the Missouri law, in that the legislature has attempted to prescribe rules governing the plaintiff in error in making his contracts with persons who come to his office seeking employment and fixing conditions under said law, the violation of which subjects the plaintiff in error to heavy fines and penalties, in event of a failure to comply with its provisions, which clearly restricts and abridges the right of the plaintiff in error to make his own lawful contracts, which is in direct contravention of the 14th Amendment of the Constitution of the United States.

In the case of People vs. Gilson, 109 N. Y., 389, a brief statement of the facts are that the provisions of the penal code prohibiting the sale or disposal of articles of food, or any attempt or offer to do so upon representation or inducement that anything else will be delivered as a gift, prize, premium or reward to the purchaser, is unconstitutional and void. The court, on page 399 in the above case, near the center of the page, said:

> "It is quite clear that some or all of these fundamental and valuable rights are invaded, weakened, limited or destroyed by the legislation under consideration. It is evidently of that kind which has been so frequent of late, the kind which is meant to protect some class in the community against a fair, free and full competition of some other class, the members of the former class thinking it impossible to hold their own against such competition, and therefore flying to the legislature to secure some enactment which shall operate favorably to them and unfavorably to their competitors in the commercial, agricultural, manufacturing or producing field.
>
> "A liberty to adopt or follow for a livelihood a lawful industrial pursuit, and in a manner not injurious to the community, is certainly infringed upon, limited, perhaps weakened or destroyed by such legislation. It is certainly lawful to sell (as in this instance) coffee. It is an article of food and is now almost one of the necessaries of life for a large number of people."

The plaintiff in error contends that the same principle of law is involved in this case as in the case above cited. In the New York case, above cited, the merchant was selling coffee. In the case at bar the plaintiff in error was selling his service

and skill in procuring positions for the unemployed, which is a common occupation, harmless and beneficial to the public, instead of being detrimental thereto, and the same principle of law lies with equal force in this case as in the case above cited.

In the case of Leep vs. Railway Co., 38 Ark., 407, the facts in brief are that under an act of the legislature, 1889, there was a provision where a corporation engaged in business was operating or constructing any railroad or railroad bridges or any contractor or sub-contractor engaged in the construction of any such road or bridges, shall discharge said employe without cause, or refuse to further employ any servant or employe thereof, or to pay the unpaid wages of such servant or employe, then earned at the contract rate, without abatement or deduction, such wages shall become due and payable on the day of such discharge or refusal to longer employ said servant, and in event the same is not paid accordingly, there was a penalty attached thereto, that the rate of wages was to continue until paid, until the matter was adjusted in accordance with the statute. The court, in its discussion of the questions there involved, said:

> "That the act is class legislation and an unjust interference with the rights, privileges and property both of the employer and employe, and places upon both a badge of slavery by denying one the right to manage his own business, and assuming that the other has so little capacity and manhood as to be unable to manage his own business, and assuming that the other has so little capacity and manhood as to be unable to protect himself and manage his own private business.
>
> "Every one has a right to adopt and follow any lawful pursuit not injurious to the community. He has a right to labor and employ labor and make contracts, to sue and give evidence, and to own, purchase and sell property. The deprivation of these rights is slavery and oppression.
>
> "That the right to acquire and possess property necessarily includes the right to contract, for it is the principal mode of acquisition and is the only way by which a person can rightly acquire the property by his own exertion. Of all the rights of persons, it is the most essential to human happiness."

Plaintiff in error contends that the above case is in point with the case in controversy, in that the legislature, by and

under the provisions of said act, has abridged the right to contract and deprived the plaintiff in error of his constitutional privileges, and his property, without due process of law. The court, in the above case, in a further discussion of the questions therein raised, says:

> "That we think it is obvious that the right to contract cannot be limited by arbitrary legislation which rests upon no reason upon which it can be dependent, for, if it could, the right would cease to exist and become a license revocable at the will of the legislature, and the government will become a despotism in theory if not in fact. Such a power cannot exist, for if it could it would be subversive of the right to enjoy and defend liberty, to acquire and possess property, and to pursue happiness, declared to be inalienable by the Constitution of this State."

The court erred in holding that said Act does not offend against Article V., Section 30, of the State Constitution, which provides:

> "The legislature shall pass no local or special Act in any case where a general act can be made applicable, and where the general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by a majority of the electors voting thereon in the district to be affected."

We contend that Act 301 of Public Acts of 1913 of the Laws of Michigan is purely and simply a local law, in that there is only one city in the State of Michigan with a population of over 200,000, and that in all cities of 200,000 or over the person obtaining a license through the State Labor Commissioner under this law would be required to pay $100, and in all cities under 200,000 the applicants, to obtain a license, would have to pay only $25, which makes this law not only a local law and offends against the above provision of the constitution, but is purely and simply class legislation and unconstitutional. That the Supreme Court of the State of Michigan has been called upon in several cases to construe the above provision of the State Constitution, and their opinion upon said provision is not uniform, and where the decisions of the State Supreme Court is not uniform upon its own constitution and laws this court follows its own judgment.

In the case at bar, on record page 14, the Supreme Court of Michigan, in discussing the above provision of the State Constitution, said:

> "The contention of the respondent that the Act in question violates Art. V., Sec. 30, of the State Constitution, in that under the guise of the general act it is really local legislation, is, in our opinion, untenable. It is true that it provides for a license fee of one hundred dollars in cities containing over 200,000 population and but $25 in other cities, and it is likewise true that at the present time there is but one city in the State of Michigan which has a population of more than 200,000. This fact, however, is not necessarily controlling. The Act operates upon all cities alike, except that a larger sum is charged for the license in larger cities than in smaller ones."

Judge Flavius L. Brookes, handed down the opinion in the case at bar, as above, referred to in record page 14.

In the case of Attorney General ex rel Dingeman vs. Lacy, 180 Mich. 129, the Court was construing a statute in which the legislature had, under the guise of a general law, attempted to create a domestic relations court in all cities of 250,000 or more which main provision of said statute creating said domestic relations court, upon which the Michigan Court declared the Act unconstitutional, is as follows: Act 186, Public Acts of 1913, of the Laws of Michigan, which in part provides as follows:

> "An Act to provide and establish a court of domestic relations in each county of this state which has a population of upwards of 250,000, to define its jurisdiction, and for the purpose of this act to provide for additional circuit judges in said county."

The Michigan Court in discussing the above act in part said:

> "Act No. 186 of Public Acts of 1913 creating a Court of Domestic Relations in Counties having upwards of 250,000 population is local in its purpose and effect, and violates Art. V, Sec. 30 of the State Constitution."

The Court further said:

> "In order to warrant the legislature in so classifying municipalities or other subdivisions of the state,

> it is necessary to find justification therefor in some substantial difference in conditions arising out of the greater number of inhabitants, and in no case may such a classification be sustained where it is a manifest subterfuge."

Plaintiff in error contends he raised the same questions against the validity of Act 301 of Public Acts of 1913, relative to it being a local law, and class legislation, as was raised in the case above cited, and the Michigan Supreme Court sustained the constitutionality of Act 301 of Public Acts of 1913 and held Act No. 186 of Public Acts of 1913 as being unconstitutional, which we maintain the court in the decisions in the two cases is not uniform in its opinion on Article V, Sec. 30 of the Michigan State Constitution cited by plaintiff in error in this cause.

It has been held by this court that when the state courts are not uniform in their construction of their own constitution, that this court follows the guidance of its own judgment.

In the case of San Antonio vs. McHaffy, 96 U. S., p. 315, the court said:

> "The same court, consisting of judges other than those who sat in the first case, came to different conclusions. The question may, therefore, be fairly considered as still unsettled in the jurisprudence of the state. Under these circumstances, this court has always felt at liberty to follow the guidance of its own judgment."

In the case of Ohio Life Ins. Trust Co. vs. DeBolt, 16 How. 431, the court said:

> "It is true that this court follows the decisions of the state court in constructing their own constitution and laws, but where those decisions are in conflict, this court must determine between them."

In the case of Spokane, Appellant, vs. A. M. Macho, Respondent, a brief statement of the facts in the above case are as follows:

> "Defendant was arrested and charged with a violation of an ordinance of the city of Spokane, Wash., entitled: 'An ordinance licensing and regulating the

keepers of employment offices and the business of employment agencies in the city of Spokane, providing a penalty for the violation thereof,' " etc.

Among other matters covered by the ordinance it is provided:

"Sec. 7. It shall be unlawful for any person keeping an employment office to make any willful misrepresentations to any person seeking employment through such office, or to willfully deceive any person seeking employment through such office and to take a fee for such employment." Ordinance Spokane, No. A-2, 633.

Defendant was convicted before the police magistrate of the city; whereupon he appealed to the superior court. In that court he demurred to the complaint upon the ground that it did not state facts sufficient to constitute a cause of action. The demurrer was sustained, the defendant discharged, and from a judgment of dismissal the city appealed.

The charter provisions relied upon to sustain this prosecution are as follows:

"Sec. 53. To regulate or prohibit the carrying on, within the corporate limits of the city, of occupations which are of such a nature as to affect the public health or good order of the city, or to disturb the public peace, and which are not prohibited by law; and to provide for the punishment," etc.

"Section 55. To provide for the punishment of all disorderly conduct and of all practices dangerous to the public safety or health, and make all regulations necessary for the preservation of public morality, health, peace and good order," etc.

The Court, in its discussion of the validity of said ordinance, page 323, said:

"Assuming that it is within the police power of the city to enact an ordinance to protect the citizens from fraud, imposition, willful misrepresentations and deceit, in Section 7 of the ordinance in question cannot be sustained. It is a fundamental principle that an ordinance must be fair in its terms, impartial in its operation, and general in its application. Dillon's Municipal Corporations, 302, McQuinlan Municipal Ordinances, 193, the ordinance before us assumes to license and regulate the business of employment agencies. This has been held to be a proper exercise of

police power of the state. Price vs. People, 193 Ill., 114; 61 N. C. 844. But Section 7 goes further. It defines a common law crime and provides a penalty for its infracture, not for all who may be guilty of a like offense, but the employment agent who shall by willful misrepresentations or deceit obtain the money of another. It cannot be denied that the business of the employment agent is a legitimate business, as much so as is that of the banker, broker or merchant, and under the method prevailing in the modern business world, it may be said to be a necessary adjunct in the prosecution of business enterprise. The vice of the section under discussion lies in this: That it makes an act criminal in one who may be engaged in a lawful business without the act committed under like circumstances by another may not be so. A business may be classified by ordinances under the police power of the state, if the object of the legislation is revenue, and all necessary and proper penalties may be provided to insure its due enforcement. But if the object is regulation merely, such classification will not be tolerated. In re Camp, 38 Washington, 393; 80 Pac. 547.

"The classification must be based on some reason suggested by a difference in the situation and circumstances of the subject treated, and no arbitrary distinction between different kinds or classes of business can be sustained, the conditions being otherwise similar.

State vs. Sheriff of Ramsey Co., 48 *Minn.* 236.

"Under the rule just quoted, those engaged in a business lawful and orderly in itself, although subject to license and regulation, cannot be made a class upon which a penalty statute shall operate to the exclusion of others, for the crime defined is not common to the business of employment agencies, but common to all, and to be sustained must include within its terms all who may be likewise guilty. It has been held that an ordinance which would make the act done by one penal and impose no penalty for the same act done under like circumstances by another, could not be sanctioned or sustained because it would be unjust and unlawful."

Tugman vs. Chicago, 78 *Ill.* 405.
Chicago vs. Umpff, 45 *Ill.* 90, 92.
McQuinlan, Municipal Ordinance, 193.

> "While the cases cited were all upon a different state of facts, in that they sought to exempt a class within a class, yet the principle applies with undiminished force to the case at bar. This is apparent when it is remembered that it is the act which the law is concerned rather than the business, in which one may be engaged when he commits it. It is the law that stands at the bar of this court for judgment; not the respondent. To sustain Section 7 it must be measured by the general welfare clause of the charter hereinbefore quoted, and when so graduated it cannot meet the test. It makes the act of one engaged in the particular business criminal, while the same act committed by another in a different business may go unchallenged by the city. If the respondent is guilty, those aggrieved must resort to the general laws of the state for a remedy. Subd. 5 of Sec. 59 can have no application here. The only question open under §7 is whether in the exercise of its authority the city has gone beyond a reasonable and constitutional limit of police regulation. We decide that it has done so."

The Judgment of the lower court is affirmed.

Fullerton, Mount, and Dunbar, J. J., concur.

Hadley, C. J., and Crow, J., took no part.

In the case of Robinson vs. Miner, 68 Mich., near the bottom of page 566, the court held:

> "The right to carry on a lawful business cannot be made to depend upon the arbitrary will or caprice of any man or local board as is done under this law."

Plaintiff in error, maintains that this whole act is invalid and unconstitutional for the reasons set forth in his proceedings and supported by this brief.

In the case of Minnesota Ex rel Peter Luria vs. John Wagner, 69 Minn., 206:

In this case the relator was convicted of peddling goods without a license in the town of Rose in Ramsey County, contrary to chapter 107, laws of 1897. The relator was sentenced to imprisonment on such indictment and sued out a writ of habeas corpus claiming that this act was unconstitutional and void for two reasons:

> "(1) It contravenes sections 33 and 34 of Article IV of the Constitution prohibiting partial class legislation and (2) it permits an excessive and unreasonable amount of money to be demanded as a license fee."

The court declared the act unconstitutional on the first ground and discharged the relator from custody and judgment was entered accordingly.

In the case of State of Maine vs. Charles W. Mitchell, 97 Maine, 66, the court held, quoting from Syllabus:

> "The Federal constitution in amendment 14, the last clause of the first section, and the constitution of this state, Sec. 1, Article I, affimatively guarantee to all persons an equality of right to pursue any lawful occupation under equal regulations and protection by law, whatever the difference in their personal powers, attributes, conditions or possessions. * * * The discrimination sought to be made in the hawkers' and peddlers' act offends against that equality of right established by the fundamental law. * * * By reason of such attempted unconstitutional discrimination no one can be required to pay the license fee named in said act or be punished for refusing to pay them."

In the case of William vs. Mayor, 2 Mich., 568, the court held:

> "That taxation not based on any idea of benefit to the person taxed would be grossly unjust, tyrranical and oppressive, and might well be characterized as 'public robbery.'"

In the case of Marcus A. Brown vs. Board of Commissioners of Cook County, 84 Ill., 590, relative to the invasion of the constitution by the Legislature passing local laws, the court said:

> "Designating counties as a class to minimum population, which makes it absolutely certain but one county in the State can avail of the benefits of a law applicable to such class, cannot but be regarded as a mere device to evade the constitutional provision forbidding special legislation."

In the above case the court further held:

> "That construction, if once adopted, might with equal propriety be extended so as to warrant the classification of other municipalities such as cities, towns and villages, and the evil of class or special legislation that existed under the former constitution would be revived in a slight modified degree."

The court further said in discussing local legislation in the above case:

> "That its absurdity would be the most manifest if the general assembly should designate as many classes as there are counties in the State, and then enact a law limiting in its operation to each class under the mere pretense it was nevertheless a general law applicable to a particular class; such a construction would render valueless the salutary provisions of the constitution forbidding local or special laws."

The respondent and appellant contends that the above case is on all fours with the case at bar, as we have the same provision in our constitution, Art. 5, Sec. 30, as is provided in the Illinois constitution, and we maintain that if Act 301 of Public Acts of 1913 can be sustained on the ground of such classification, that it is a public necessity and comes under or within the police power of the State, or for any other reason not found in the constitution, then the provision of the constitution against local and special legislation is rendered nugatory and worthless and the Legislature can do indirectly what it could not do directly.

In the case of Scowden's Appeal, 96 Pa. St., 422, the court, in part, held:

> "That the act was in conflict with Sec. 7, Art. 3, of the Constitution and void; this act is an attempt to evade the constitution. It is special legislation under the attempted disguise of a general law. Of all forms of special legislation this is the most vicious."

Plaintiff in error contends, in view of the above decisions, that Act 301 of Public Acts of 1913, is a local law in that there is no other city in Michigan, outside of the City of Detroit, that has a population of 250,000, and is therefore, in contravention of the constitution above cited providing against local legislation.

In the case of Spring Valley Water Co. vs. City and County of San Francisco, 165 Fed., 667, the court held:

> "The terms, life, liberty and property, embrace every right which the law protects. They include not only the right to own and hold, but also the right to use and enjoy property. Profits and income are property. The right of contract, the right to fix the terms and conditions upon which the owner will sell, lease or otherwise dispose of his property is itself property, and any statute or ordinance which limits or curtails these rights deprives the party affected of his property."

The plaintiff in error contends that in view of his proceedings and the record in said cause, supported by the authorities in his briefs, that the great weight of authority cited upon the question involved in the case at bar holds with the plaintiff in error and that such laws or acts of the Legislature, as the one here in controversy, are unconstitutional and void and is as no law, and no alleged offense committed under it by the plaintiff in error should be considered a crime.

The plaintiff in error further contends that he has been prosecuted and persecuted most of the time for a year, or thereabouts, under this law by the State Labor Commissioner, or through and under his direction and many complaints have been filed against the plaintiff in error for the alleged violation of this law, when at the same time the plaintiff in error was conducting himself in an orderly and upright manner, and taking no advantage of the public or any of its citizens who sought employment at his office, but on the other hand, rendered valuable service in procuring positions for needy and worthy applicants at the City of Detroit, who otherwise could not have secured employment, and notwithstanding the fact that there is a free public employment office conducted by the State Labor Commissioner in the City of Detroit, where all applicants for employment have a right to apply for a position without any charge or cost to them, and it is not compulsory on any citizen or applicant to come to the plaintiff in error's office and enter into an agreement with him and agree to pay certain fees in order to procure employment, unless upon his own volition; but they chose to come to the plaintiff in error's office and pay for his services rather than to go to the free employment agency to seek a position where no charges are made

for services. The plaintiff in error is at a loss and is unable to solve the problem unless it is that the plaintiff in error furnishes a higher class of service than that of the free employment agency conducted by the State Labor Commissioner; or, it may be a higher class of applicants who apply for positions through the plaintiff in error's office, and feel that they are able to pay for his services rather than to seek employment where no charges are made through the free employment office; that would be the natural inference, when considering the class of applicants for employment where no charges are made, as is the case with the free employment agency.

In the case of the People vs. Wilson, 249 Ill. 195. The facts in brief in this case are, that this was an action of debt commenced in the name of the People for the use of the State Board of Health against John A. Wilson, before a justice of the peace in Kankakee County, for the violation of Paragraph 12 of Chapter 91, (Hurd's Statutes 1909, p. 1474), which reads as follows, in brief:

> "That any itinerant vendor of any drug, nostrum, ointment or appliance of any kind, intended for the treatment of diseases or injuries, who shall, by writing or printing, or any other method, profess to the public to cure or treat diseases, or deformity, by any drug, nostrum or application, shall pay a license of one hundred dollars per month into the treasury of the Board, to be collected by the Board in the name of the People of the State of Illinois, for the use of said Board. And it shall be lawful for the State Board of Health to issue such license on application made to said Board, said license to be signed by the President of the Board and attested by the Secretary with the seal of the Board; but said Board may, for sufficient cause, refuse said license. * * * subsequent sections of the Act provide that in case of conviction, the offender shall be fined in the sum of one hundred dollars for the first offense, and $200 for each subsequent offense, and stand committed to the County Jail until the fine and costs are paid."

The court, in its discussion of the validity of said law, in its various phases, said:

> "The only effect, therefore, of the statute, if it is a valid statute, is to give the druggist and the licensed itinerant vendors a monopoly of the business of selling

patent or proprietary medicines, without in any way affording any additional protection to the health of the public. We think, however, the license fee in this case is so high as to be prohibitive upon the itinerant vendor (which feature of the statute we will consider later) and that the practical operation of the statute must be to give the druggists of the state a monopoly of the business of selling patent and proprietary medicines, without in any way conserving the health of the public, which was the ground upon which a similar statute was held invalid in Noel vs. People, 187 Ill., 587."

"If the reasoning of that case is sound,—and we have no doubt it is—we think that a valid statute cannot be passed which accomplished by indirection what it was held in that case could not be accomplished directly,—that is, instead of providing in direst terms, by a statute that no person, other than a druggist shall vend patent and proprietary medicines, pass a statute which imposes so high a license fee for the vending of patent and proprietary medicines that no itinerant vendor can afford to take out a license, the practical operation of which would be to give the druggists of the state a monopoly of that business.

"From a careful examination of the record, we are satisfied that the paragraph of the statute in question, as applied to an itinerant vendor of patent and proprietary medicines (which was the business in which appellee was engaged) is unconstitutional."

Plaintiff in error contends that the license law under the statute at bar is not a license for regulation of the business but a tax, in that it is not required of the plaintiff in error, under the law, to pay only that sum of money which is necessary to obtain his license to regulate the business in which the plaintiff in error is engaged, and that that phase of the case above cited which relates to the monopoly being given to druggist in the case cited, applies with equal force in the case at bar, in that the statute here in controversy vests such an unlimited and discretionary power in the State Labor Commissioner that he is able to say who shall engage in this lawful business, which gives him, to the same extent, a monopoly of the business under his supervision, to issue or withhold license at his option, to favor his friends, and punish his enemies by refusing to issue them license.

In the case of Matthews vs. The People, 202 Ill. 389, facts in brief are, that this is an indictment against the plaintiff

in error for operating a private employment agency for hire, in the City of Chicago, without having first procured a license from the Secretary of State, and without having given a bond in the penal sum of $1,000, conditioned for the faithful performance of the duties of a private employment agent, as required by Section 10 of an Act of the General Assembly, entitled: "An Act to create free employment agencies in cities of certain designated populations, and to provide for the maintenance, management and control of the same and to prevent private imitations of the name of the same, and regulating private employment agencies, approved April 11, 1899, and in force July 1, 1899. This Court, in a long and well reasoned out opinion, and referring to the 193d Illinois, cited by the Court in the case at bar, overruling the same, and declaring the statute unconstitutional because of the decision of this court.

In the case of Kellyville Coal Co. vs. A. J. Harrier, 207 Ill., 624, the court said, quoting from the syllabus:

> "The exclusion of farmers from the operation of an act prohibiting employers from setting off debts of the employes against claims for wages creates an unjust discrimination which invalidates the act."

The above case, the court, in discussing the validity of said law, held that the same was discriminatory and class legislation, and against the constitutional rights of the plaintiff in error because it deprived the plaintiff in error of his property without due process of law, and it was against his constitutional rights to equal protection under the law, which we contend attains in the case at bar, in that the law is class, being a local law and in conflict and contravention with Article V, Sec. 30, of the State Constitution which provides that no local law shall be passed by the legislature until the same is submitted to the qualified electors of the district to be affected by it, and that is a judicial question.

The plaintiff in error contends that the Supreme Court of the State of Michigan is not uniform in the construction of its own constitution and statutes, which we have attempted to show and expect to point out during the course of this argument in what particular regard that said Court, in its decisions, are not uniform. In the case at bar, the Supreme Court holds, in construing section 1 of Act 301 of Public Acts of 1913, of the Laws of Michigan, that the State Labor Commissioner, under and by its provisions, is vested

with authority to pro-rate the license to correspond with the period of time said licenses are to run, which the plaintiff in error maintains is an error in that the Court can find no express language in said statute to justify it in holding or reaching any such a conclusion as the Court reached in this case under Section 1 of said Act, which said holding is diametrically opposed to the holding of the Michigan Supreme Court in the case of Eikhoff vs. The Charter Commission of the City of Detroit, No. 176 Michigan, 535. In this case the petitioner, Henry J. Eikhoff, petitioned the Supreme Court for a writ of prohibition to restrain the Detroit Charter Commissioner from ousting him from said body and from said office, and to vacate the same, as it exceeded its jurisdiction. That said writ of prohibition was granted to the petitioner, and said Commission was restrained from vacating the office and ousting the petitioner from holding the same. Upon the hearing in the Supreme Court, in the course of the opinion, and in its construction of the statute which created the Charter Commission of the City of Detroit, Act No. 279 of Public Acts of 1909, Section 20, the Court said:

> "We have stated all the powers and authority specially conferred upon the Charter Commission by this legislation. It is a well established rule of statutory construction that where powers are specifically conferred, they cannot be extended by inference, but that the inference is that it was intended that no other or greater power was given than that specified."

The argument advanced by the corporation counsel, attorney for the Detroit Charter Commission, in substance was to the effect that the Charter Commission was a legislative body and under the statute it had the power to pass upon the qualifications of its own members, and they contended that while it didn't expressly set forth in the statute the provision under which they were attempting to justify the Detroit Charter Commission in the ousting of the petitioner and vacating the office, it was inferred in the statute that, it being a legislative body, it was vested with such power, which the Court, in its final decision, held that it was not a legislative body and there was no express authority given in the statute in justification of the act of the Detroit Charter Commission, and holding with the petitioner that the Charter Commission exceeded its authority in that it had

no jurisdiction to oust the petitioner and vacate the office. The Court closing the case as follows:

> "Respondent Charter Commission, having failed to show cause why the writ of prohibition issued by this court should be vacated, and it appearing to the Court that all the acts and doings of the said respondent taken in the premises to declare the seat of the petitioner as a member of said Commission vacant, and ousting him from his office, were without jurisdiction and void, said writ of prohibition is hereby declared and ordered to be and remain in full force and effect, without costs to either party."

So in the case at bar, there is no expressed provision given the State Labor Commissioner to pro rate the license, and to permit him to do so would be equivalent to the State Labor Commissioner enlarging his powers by his own act in pro-rating the license under a statute where no authority is expressly given him. The plaintiff in error contends and has all through this proceeding, that the State Labor Commissioner was vested with legislative, executive and judicial power, and if the Court's holding on Sec. 1 of the Statute here in controversy is correct, then the plaintiff in error contends that his position and argument was correct in stating that the State Labor Commissioner was vested with executive, legislative and judicial authority. In other words, it is equivalent to permitting the State Labor Commissioner to amend the positive law of the State of Michigan at his will or option, to satisfy his whims or caprice.

The plaintiff in error contends that in view of the facts in this case, and the eminent authorities bearing upon the question here in controversy, that he is entitled to the relief asked for in his proceedings now before this Court.

Respectfully submitted,

PROCTOR K. OWENS,
606 Hodges Building,
Detroit, Michigan.

No. 402.

IN THE

Supreme Court of the United States

(FEBRUARY TERM, 1916)

LE ROY BRAZEE, *Plaintiff in Error,*

vs.

THE PEOPLE OF THE STATE OF MICHIGAN.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

LeRoy Brazee, plaintiff in error, had been engaged, for a long time prior to the enactment of Act No. 301 of the Public Acts of 1913 of the Laws of Michigan, in the business of conducting an Employment Agency, as his chosen occupation, for profit, in which he earned a living for himself and family, up until the going into effect of the law aforesaid, which made it compulsory upon the plaintiff in error, in order to further engage and prosecute his lawful and chosen occupation, to execute and file a bond with the State Labor Commissioner, running to the People of the State of Michigan, in the penal sum of One Thousand Dollars of lawful money of the United States, as a guarantee that the plaintiff in error would not violate but comply with all of the conditions as is incorporated under the provisions of said law. That upon failure of the plaintiff in error to conform to all the provisions of said Act, then under the penalty clause of said Section 8 of said Act, the plaintiff in error was subjected to

heavy fines and penalties, and under Section 1 of said Act the plaintiff in error's bondsman was also subjected to an action to recover on said bond, either by the State Labor Commissioner, by suit instituted thereon against the Bonding Company, or by the person or persons claiming to be aggrieved because of any act of the plaintiff in error in not carrying out the provisions of said law.

That under the provision of Section 6 of said Act, a complaint was filed against the plaintiff in error in the Recorder's Court for the City of Detroit for the violation of the following specific provision of said Act:

> "No employment agent or agency shall send an applicant for employment to any employer who has not applied to such agent or agency for help or labor."

which said provision of said Section of said Statute plaintiff in error contends was against the federal and state constitution and therefore was void, together with all the other obnoxious sections of said statute which the plaintiff in error set forth in his motion to quash in said court, which the same was denied and is now a part of the proceedings in this court. That said case was taken to the Supreme Court upon writ of error, the plaintiff in error attacking the same through his proceedings in said court, upon the ground that the same was unconstitutional and void, for many reasons, which is now before this court. That said Supreme Court sustained the finding of the lower court, affirming the judgment of said lower court and issuing a mittimus to said Recorder's Court to proceed to a judgment in accordance with the opinion of said Supreme Court. That said judge of the Recorder's Court subsequent thereto sentenced the plaintiff in error to ninety days in the Detroit House of Correction, located in the City of Detroit and State of Michigan, (a penitentiary). That this case is here on a writ of error to review the judgment of the Supreme Court of the State of Michigan.

INDEX.

REPLY BRIEF AND ARGUMENT OF PLAINTIFF IN ERROR.

CASES CITED.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 402.

LE ROY BRAZEE, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,
DEFENDANT IN ERROR.

REPLY BRIEF OF PLAINTIFF IN ERROR.

Statement of Facts.

The statement of facts is set forth in the original brief filed in this cause by the plaintiff in error.

The Attorney General, on page 5 of his brief, sets forth that part of section 6 of the act in question under which the plaintiff in error was complained against and convicted for the violation of said provision. Said provision is as follows:

> "No employment agent or agency shall send an applicant for employment to an employer who has not applied to such agent or agency for help or labor."

The plaintiff in error contends it is unreasonable, unjustifiable, indefensible, and it contravenes the Federal Constitution, and is therefore void, and the attorney for the defendant in error in his argument in support thereof is grossly in error. And we are further justified in reaching the conclusion, based upon the argument of the attorney for the defendant in error, that this law is unjustifiable because it not only deprives the person under it from choosing his own lawful vocation and from managing and supervising his own business and making his own contracts relative thereto, but he is left subject to the arbitrary dictation of the legislature to make his contracts and to have the same rigidly enforced under the arbitrary power of the State Labor Commission, as in the case at bar.

The Attorney General further argues that this law should be sustained because of the nature of the business and because of the character of the class of citizens, as to their intelligence in that they are easy victims of such agencies to perpetrate fraud upon them, and therefore a special protection should be thrown around this class of citizens. We find no vindication in an argument to vindicate the validity of this law which argues that because of the class upon which it operates is overly wise and the class which it hoped to protect is of that ignorant and credulous class who are not able to protect their own interest. If that can be advanced as an argument, it is equivalent to offering a premium on ignorance and diametrically opposed to the principles of our republican form of government.

We further contend that such an argument is not justifiable, for the reason that it is a reflection upon the laboring classes, in this: that it designates them as an ignorant class, which is not as a matter of fact supported by the real facts as they actually exist. We desire to say that the hundreds of thousands of men employed in these great industrial institutions are not the ignorant and credulous class as is designated by the attorney for the defendant in error. They are as

skillful in their vocation and business in which they are employed as any other class of business men. They know their rights; they are not *non compos mentis,* but are equally able to take care of themselves in any kind of a business transaction which they undertake to do. If they perchance happen to lose their position in the factory or business in which they are engaged for any reason whatever and they happen to call at the office of the plaintiff in error and put in their application for a position and enter into an agreement with the plaintiff in error to procure them employment for and in consideration of the payment of a fixed and stipulated sum of money in a specified time, or the plaintiff in error refund their money to them in event that no position is secured, can it be said that the applicant is not competent to enter into such an agreement, and can it be successfully maintained that the plaintiff in error is not correspondingly competent to enter into a like agreement with such applicant? And can it be said that such a law if it restricts the parties to enter into such an agreement does not offend against the Fourteenth Amendment of the Constitution of the United States, in that it abridges the rights, privileges of the citizens to prosecute their own lawful vocation, and make their contract relative thereto. The same principle of law was involved in the case of Coppage *vs.* Kansas, where a similar statute relative to the one in controversy was enacted in Kansas abridging the rights of the citizen to make his own contract and fixing a penalty therefor for its violation. This court declared the law invalid and unconstitutional.

We contend that the same principle of law is involved in the case at bar. My client was prosecuted in the criminal courts of Detroit for the making of a contract, a copy of which is set forth in the plaintiff's record on page 8, because it did not conform with this statute, notwithstanding the fact that the contract was mutually entered into by the parties thereto, and properly executed by them, which plaintiff in error contends is in controvention of the Federal Constitution.

The Attorney General in a further argument, in attempting to sustain the validity of this law, states that there is a greater opportunity for fraud to be practiced on the weak and credulous in this business than in any other lawful business, and therefore his business should be subject to the regulation of the legislature under police power. We contend that the attorney for the defendant in error is again in error. There is no more opportunity to deceive or mislead or to take advantage of the weak, ignorant, and credulous class of citizens in this business than in any other business, and therefore does not fall within the police power of the State and is not subject to be regulated by the legislature any more than any other lawful and legitimate business which is being conducted by the citizens of Michigan. Judge Grant, of the Supreme Court of the State of Michigan, in discussing the police powers of the legislature, very tersely, in a well-written opinion of the court in the case of People *ex Rel.* Valentine *vs.* Berrien County, 124 Michigan, 664, in which he briefly said:

> "The act is not aimed at brokers in the ordinary meaning of that word. It is not aimed at commission merchants generally. It is aimed solely at commission merchants who engage in the business of selling farm products for producers upon commission. It provides that such a merchant shall pay a fee and execute a bond as a condition precedent to doing business.
>
> "The condition of the bond is the honest and faithful performance of this contract. The business of buying and selling on commission has existed ever since commerce began. There are and always have been dishonest men engaged in it as there are and always have been in every other branch of business. There are and always have been dishonest sellers who have packed their produce in such a manner as to deceive. It would be as reasonable to require the latter to give bonds to properly pack their produce. In every such case the *common law* provides an ample remedy for redress to the injured party for breach of a contract

There is no more reason why commission merchants should pay a license fee and execute a bond to pay his debts and to do his business honestly than there is that any other merchant should pay a like fee and file a bond to properly do his business and pay his debts.

"The business requires no regulation any more than any other mercantile pursuit. There is nothing in it hostile to the comfort, health, morals or even inconvenience of the community. It is carried on by private persons in private buildings and in a manner no different from that in which a merchant selling hardware, groceries or dry goods carries on his business.

"The law can find no support in the police power inherent in the State. It is not like the liquor traffic which under the decisions of every court is subject to police power because of the injury it does to the health, the morals and peace of the community and may be prohibited altogether. Neither is there anything in it which requires regulation as do hackdrivers, peddlers, keepers of pawn shops and the like.

"The Constitution guarantees to the citizens the right to engage in lawful business unhampered by legislative restriction where no restriction is required for the protection of the public. We are compelled to hold this law void because: (1) It is class legislation, (2) it is an unjustifiable interference with the right of citizens to carry on legitimate business. The writ is denied. The other justices concurred."

The plaintiff in error contends that the class of citizens that the Attorney General argues are protected under this law have already sufficient and ample protection under the common law in Michigan to recover any damages or redress any grievances that they may have against any employment agent with whom they may do business, the same as other citizens in their lawful business. If a fraud is perpetrated upon them, they have their redress in the courts of Michigan, under the common law, the same as any other citizen who may have grievances against any person perpe-

trating a fraud upon them in their vocation, and therefore there is no necessity for this law, and the same is unjustifiable under the decision of this and other courts as being against the constitutional rights of the plaintiff in error, in that it does not accord to him the same rights under the law of Michigan as is accorded to other citizens committing like offenses, in that he denied the equal protection of the law; instead of the civil courts being open to him to defend, as in all other fraud cases, they are absolutely closed against him, in that criminal complaints are filed against him and he has to defend in criminal court, which because of the general surroundings prejudices his interests and because of the nature of complaint he is stamped with the stigma of crime, and, if found guilty, is subjected to a fine or imprisonment in the Detroit House of Correction, which is a penitentiary, from ten to ninety days, which said fine or imprisonment is excessive, unreasonable, and unwarranted by law.

That section 6 of said act provides that any person conducting an employment agency in violation of any provision of said act shall be deemed guilty of a misdemeanor and be liable to a fine and imprisonment, and thereby any employment agent guilty of any fraudulent promise is liable to be adjudged guilty of such misdemeanor, and thereby one class of citizens guilty of a certain conduct are made subject to a penal statute to which others guilty of the same conduct are not subject; which said provision constitutes class legislation.

That sections 6 and 8 of said act provide that any employment agent that is guilty of any fraudulent disposition is made liable to a fine and imprisonment for a term longer than that to which any other person guilty of the same conduct is liable, which provision constitutes class legislation; therefore we contend that this whole act is unconstitutional for the reason set forth in plaintiff in error's proceedings supported by the authority cited in plaintiff's brief.

Plaintiff in error contends that arbitrary statutes, like the

one here in controversy, abridging the right of the citizen to make his own contract and follow in his own chosen and lawful vocation, offends against the Fourteenth Amendment of the Federal Constitution, and therefore is void; so held in the case of Coppage *vs.* Kansas, 236 United States, 1.

In this case a statute in the State of Kansas was enacted making it a misdemeanor for any person in the employ of a firm or corporation who coerced any person, either by influence or threat to make a contract to accept certain employment, was subjected to fine and imprisonment; that Coppage was the agent of the railway company, in the capacity of its superintendent; that one Hedges was then in the employ of the corporation as a switchman and belonged to the Switchmen's Union of North America; that Coppage drafted an agreement in substance to the effect that the said Hedges, in order to continue in the employment of the corporation, must sign such agreement withdrawing from the Switchmen's Union or he would be discharged. Hedges refused to sign the agreement and was discharged. Proceedings were started against Coppage in the criminal court and he was convicted and sentenced to jail for thirty days. The case went up to the Supreme Court of Kansas, and it affirmed the decision of the lower court, and it was brought to this court on writ of error, the court in this case holding that the Kansas Supreme Court was in error; that said law offended against the Federal Constitution, and was therefore void. We contend that the same rule of law as applied in the above case by the Supreme Court of the United States is very pertinent and applicable to the case at bar, in that the plaintiff in error is deprived of the same rights and privileges as were denied to the plaintiff in error in Kansas.

The court predicated its decision on the case of Adair *vs* United States, 208 U. S., 161, which said decision had de clared an act of Congress bearing on the same subject un constitutional.

On page 10 of the defendant in error's brief he cites

Gundling *vs.* Chicago, 177 U. S., at page 188, as sustaining his contention that this law should be sustained. The court very aptly in that case set forth the fact "that, where the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizen are unnecessarily and in a manner wholly arbitrarily interfered with or destroyed without due process of law, such law cannot be maintained."

We are unable to see how the attorney for the defendant in error, upon the reading of the statutes at bar, can say that it does not violate the principles as set forth in said case above quoted. We contend that it does.

On page 11 the defendant in error cites Kid Dater and Price Co. *vs.* Musselman Grocer Co., 217 U. S., 461. This involves the validity of the Michigan bulk sales act. The act was contested upon the ground that its provisions were without the police power of the State, and there was raised in that case several questions, and this court only passed upon the questions raised, and held as to them that it was within the police power of the State.

The plaintiff in error contends that this case had no application to the case at bar for the reason that the bulk sales act, cited by the defendant in error, was enacted for the purpose of protecting creditors and purchasers from being defrauded out of thousands of dollars of goods sold on credit to the various merchants in the general mercantile business, and to prevent endless and costly litigation of the purchaser of goods who might be required to defend lawsuits against liens of the creditors of the merchants who sold the goods.

The plaintiff in error contends that the statute creating the bulk sales law is not like the one at bar for the reason (1) that it operates upon all citizens of Michigan alike engaged in these various businesses; secondly, every person operating business under said law has the privilege of making his own contracts, unhampered by such legislative restrictions; thirdly, that they are not prevented from advertising

their business and subjected to criminal punishment for doing so, as is incorporated in the statute at bar, so the plaintiff in error contends that the above case cited by the defendant in error is not applicable to the case at bar.

Defendant in error, on page 12 of his brief, cited Moore *et al. vs.* City of Minneapolis, 42 Minn., 418, and sets forth a part of the opinion to support his contention that this law is authority for holding that the case at bar falls under the police power, and is therefore constitutional. It is not necessary to comment on this case in that it is no authority, in the judgment of the plaintiff in error, as it has been overruled by the case of Moore *et al. vs.* City of St. Paul, 48 Minn., 331, which declared the ordinance was invalid, arbitrary, and in excess of the police power, and therefore unconstitutional.

On the same page attorney for the defendant in error cites Price *vs.* People, 193 Ill., 114, which has also been overruled in the case of Matthews *vs.* People, 202 Ill., 389, so the plaintiff in error does not feel that it is necessary to make any extended argument upon those cases, inasmuch as the court last named overruled 193 Ill., which in its well-reasoned out opinion said:

> "Upon further reflection, we are satisfied, while the views there expressed, speaking of the 193 Ill., may have been correct as application to a section like § 10, standing by itself, yet, when applied to § 10 as a part of the whole act, they ought not to be adhered to. The case of Price *vs.* People, *supra*, was decided in October, 1901, and the rehearing therein applied for was denied in December, 1901. Since that time, to wit, in March, 1902, the Supreme Court of the United States has announced its decision in Connolly *vs.* Union Sewer Pipe Co., *supra*, and the latter case holds that legislation containing such an exception as § 8 of the act of April 11, 1899, is in contravention of the 14th amendment of the Constitution of the United States. As the Supreme Court of the United States is paramount authority upon all questions relating to

> the interpretation of the Constitution of the United States, we feel it to be our duty to follow the holding of that court to the effect that such legislation as is here under consideration is a violation of the 14th Amendment (Mapes *vs.* Scott, 94 Ill., 379). Therefore, the case of Price *vs.* People, *supra,* is overruled."

So the plaintiff in error contends that the reason of the invalidity of such laws are better set forth in the argument and reason of the court above cited than the plaintiff in error could advance, and the plaintiff in error accepts the reasoning of the court above as the only logical proof that could be reached in the premises and adopts the same.

On page 16 of the defendant in error's brief the defendant in error cites the dissenting opinion in *ex parte* C. E. Dickey, 144 Cal., 234, as authority for sustaining his contention in this case against the majority opinion, who declared said law unconstitutional. We are at a loss to see what weight this minority opinion would have against the majority of the court when the opinion of the majority of the court was so well grounded in reason and law and supported by such eminent authority as is therein set forth; so the plaintiff in error does not deem it necessary to make any extended argument in that case, in that the court makes the argument for him in the majority opinion.

On page 19, People *ex rel.* Armstrong *vs.* Warden, 183 N. Y., 233, the statute in that State is quite dissimilar to the act here in controversy, in that said act did not have incorporated in it so many unreasonable, discriminatory provisions as is incorporated in the statute at bar, and therefore the plaintiff in error contends that it is not applicable to the case at bar.

On page 22 of the defendant in error's brief he cites Spokane *vs.* Macho, 51 Wash., 322, as an authority to sustain the validity of this law here in controversy. The plaintiff in error contends that this ordinance is declared invalid by the court in the above case upon the ground that the

criminal provisions incorporated in said statute furnish the plaintiff in error with criminal punishment for the commission of fraud, which was not applied to other citizens of the State of Washington for the commission of similar offenses, which was, therefore, discriminatory and unconstitutional.

Plaintiff in error cited this case in his original brief and contends that the same is in point and applies with equal force against the statute here in controversy, in that the Michigan statute has a penalty clause similar to the one above quoted, and for that reason alone the Court in the case of Spokane *vs.* Macho declared the law unconstitutional.

Plaintiff in error contends that it is not necessary to elaborate upon that opinion, inasmuch as he has cited it in his original brief, and we accept the opinion of the court therein as being the proper and only logical conclusion to reach.

On page 26 the defendant in error cites Union Bridge Co. *vs.* United States, 204 U. S., 364, and also on page 27 he cites Railroad Commission cases, 116 U. S., 307, as authorities on delegation of legislative and judicial powers. Plaintiff in error contends that the facts in those cases are not similar to the facts in controversy, and therefore the powers of the board and the railroad commissioners, because of the business, were enlarged by the legislature in order to carry out the express provision of the statute in that particular regard, which there is no necessity for any such powers as vested and exercised by the State Labor Commissioner in the case at bar. And the same is true in the case of Kennedy *vs.* State Board of Registration, 145 Mich., 241; Michigan Central Ry. Co. vs. Railroad Commission, 160 Mich., 355, and Feek *vs.* Township Board of Bloomingdale, 82 Mich., 393, on page 28 of the defendant in error's brief as authority on delegated power. Plaintiff in error contends that the facts in those cases are not at all similar to the facts in the case at bar, and therefore do not apply. That in the case of Kennedy *vs.* State Board of Registration are cases which affect the health and general welfare of the community, and

the board would naturally have the power to say whether or not an applicant for license to practice medicine had sufficient skill to administer the same in accordance with the practice and science of the medical profession. It is self-evident that it would be perfectly proper to protect the health of the community.

And in the case of Sherlock *vs.* Stewart, 92 Mich., 193, is very far from having any application to the case at bar in that this court and every court in the land has said in its repeated decisions that the liquor traffic had no moral right to exist, nor any inalienable right to exist, in that it was both destructive to the lives, morals, and best interests of the community, and it could only exist subject to legislative enactment, which could place any restriction upon the business to the extent of prohibiting the sale of it altogether and to confiscate the property and the State would not be held liable.

This court held in the case of Beer Co. *vs.* Mass., 97 U. S., 25, and in many other decisions that the liquor traffic is subject to police regulation, to the extent of abolishing it altogether, because of the nature of the business—it had no inalienable right to exist. There can be no such argument made against the business engaged in by the plaintiff in error.

Therefore we contend that the statute at bar is arbitrary class legislation, abridging the right of plaintiff in error to prosecute his own lawful and chosen vocation and to make his contracts relative thereto, and therefore in violation of the Federal Constitution and void.

The defendant in error cites Hayes *vs.* Missouri, 120 U. S., 68, in support of his contention relative to proper and reasonable classification. We fail to see how this case applies, as the facts are altogether different than the facts in the case at bar.

On page 31 defendant in error cites Liber *vs.* Van D. Carr, 199 U. S., 552, for the support of proper and reasonable classification, as holding with defendant in error and in support of the opinion of the Supreme Court of Michigan in the case at bar. The case above quoted discusses the question

of public health, the court stating that the business which, unless controlled, may be highly dangerous to the health of the community, and no affirmative showing that the power has been exerted in so arbitrative and oppressive a manner as to deprive the appellant of his property or liberty without due process of law.

The fact is altogether different in this case and the case at bar. There is nothing in the conducting of an employment agency that is dangerous to the health and morals of a community, and the case at bar is no authority and is not in point, because of the fact that the facts in the case are very dissimilar.

The defendant in error, on page 35 of his brief, cites People *vs.* Wagner, *supra,* in support of his contention of the validity of this law, which plaintiff in error contends that it is not a similar law in that the facts are not only vastly different, but under said statute the person operating under it is not subject to criminal punishment in event that he does not make certain contracts, or if he sells his product for the price he may charge or fix for it. In other words, he makes his own contract and fixes the price of his product that he sells without any discriminatory provisions in the statute regulating the same.

On page 34 of defendant in error's brief he cites the State *vs.* Carter, 129 N. C., 560, and contends that the said case overrules State *vs.* Moore, 113 N. C., 697. We contend that it does not overrule the said case, the only difference in the cases being a different state of facts, which justified the court in reaching a different conclusion; that the principles discussed were the same.

The plaintiff in error has set up in his original brief the law which he contends is controlling in this case, citing from the various States of the Union and the Federal court in support of the various constitutional questions raised against the validity of the act here in question; that all of said decisions on the various questions raised by the plaintiff in error are

thoroughly reasoned out, and the court, in the ultimate conclusion of each and all of the cases bearing upon the question in controversy, reached the conclusion that the questions discussed were in violation of the Constitution of the United States and in contravention of the rights of the persons under whom said act or acts were to operate against, and therefore could not be sustained under the pretext of the police power of the State, and that they either modified or declared said laws invalid and unconstitutional.

Therefore we contend that this law is invalid and unconstitutional, and said contention is based upon the law hereinbefore cited in this reply brief and in the plaintiff in error's original brief, and the proceedings upon which this case is prosecuted in this court, and that the Supreme Court of Michigan is in error, and said decision is against the constitutional rights of the plaintiff in error, and that the same should be reversed and said law declared unconstitutional for the reasons set forth in plaintiff in error's proceedings and the brief filed in this cause justifies the court in reaching the conclusion that said law is unconstitutional and should be so declared by this court.

Respectfully submitted,

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IN THE UNITED STATES SUPREME COURT.

OCTOBER TERM, 1915.

NO. 402.

LEROY BRAZEE,
Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF MICHIGAN,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

In Error to the Supreme Court of the State of Michigan.

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INDEX.

ALPHABETICAL LIST OF CASES CITED.

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BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

The validity of the so-called "Employment Agency" Act of the State of Michigan is involved in this proceeding. For convenience, we here print the Act in full:

AN ACT to provide for the licensing, bonding and regulation of private employment agencies, the limiting of the amount of the fee charged by such agencies, the refunding of such fees in certain cases, the imposing of obligations on persons, firms or corporations which have induced workmen to travel in the hope of securing employment, charging the

Commissioner of Labor with the enforcement of this act and empowering him to make rules and regulations, and fixing penalties for the violation hereof.

The People of the State of Michigan enact:

SECTION 1. No person, firm or corporation in this State shall open, operate or maintain a private employment agency where a fee is charged to persons seeking employment, without first obtaining a license for the same from the Commissioner of Labor, and the fee for such license shall be twenty-five dollars per annum except in cities over two hundred thousand population, where it shall be one hundred dollars per annum. Every license shall be void after the thirty-first day of December of the year in which it was issued. The form of the license shall be fixed by the Commissioner of Labor and it shall be non-transferable. The license may be revoked by the Commissioner of Labor whenever in his judgment, after full hearing, the licensed agency shall have violated any of the provisions of this act. The Commissioner of Labor is hereby charged with the enforcement of the terms of this act and empowered to make such rules or regulations as are consistent with it and aid in its enforcement and he shall direct copies or excerpts of this act to be kept conspicuously posted in every licensed agency. The Commissioner of Labor shall turn into the State treasury all fees collected under this act.

SEC. 2. The Commissioner of Labor, before granting a license, shall require each applicant to furnish a surety bond in the penal sum of one thousand dollars, conditioned that the obligor will not violate any of the provisions of this act. The Commissioner of Labor is authorized to cause an action to be brought on said in the name of the people of the State of Michigan for the violation of any of its conditions. If any person shall be aggrieved because of the violation by such

licensed agency of any provision of this act, such person may maintain an action, in his own name, upon the bond of said employment agency in any court having jurisdiction of the amount claimed.

SEC. 3. It shall be the duty of every licensed agency to keep a register in which shall be truthfully entered the date of application, age, sex, nativity, trade or occupation, name and address of every person who applies for employment at such agency, the amount of the fee charged and the wages to be paid. Such licensed agency shall also keep a register in which shall be truthfully entered the name and address of every person who applies for help at such agency, the place of proposed employment, the nature of the work to be done and the wages offered.

SEC. 4. Every licensed agency shall issue a receipt to each person seeking employment who has paid a fee, which receipt shall contain the name and address of the agency issuing it, together with all the information regarding the particular transaction hereinbefore required to be entered in both registers of the agency. Such agency shall also issue a receipt to each person seeking employment who has paid a fee for registering in such agency.

SEC. 5. The entire fee or fees for the procuring of one situation or job and for all expenses, incidental thereto, to be received by any employment agency, from any applicant for employment at any time, whether for registration or other purposes, shall not exceed ten per cent of the first month's wages. Such ten per cent shall be determined by the monthly rate offered by the applicant for help, regardless of the time during which the applicant for employment remains at the employment procured for him. Where a registration fee is charged, if the applicant, through no fault of his own, does not secure through the employment agency to which the fee has been paid, within one month, the employment applied for, said agency shall repay to said applicant, upon demand,

one-half the full amount of the registration fee paid. No registration fee shall exceed the sum of one dollar.

SEC. 6. No employment agent or agency shall send an applicant for employment to an employer who has not applied to such agent or agency for help or labor. Nor shall any licensed agency fraudulently promise or deceive, whether through a false notice or advertisement or other means, any applicant for help or employment with regard to the service to be rendered by such licensed agency and every such agency shall be liable civilly to any person who is led to expend money uselessly for transportation or other purposes through the misrepresentation or false promises of such agency.

SEC. 7. No employment agency or person connected therewith shall direct any person applying for employment to any house of prostitution or immoral resort. No licensed agency shall be conducted in, or in connection with, any place where intoxicating liquors are sold.

SEC. 8. Any person who violates or omits to comply with any provision of this act, or who interferes in any manner with the Commissioner of Labor or any of his deputies in its enforcement shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars or by imprisonment for not less than ten nor more than ninety days or by both such fine and imprisonment in the discretion of the court.

Approved May 13, 1913.

The plaintiff in error pursuant to the terms and provisions of this Act filed his application and bond in the penal sum of one thousand dollars on the 22d day of August, 1913. A license was issued to him and he entered upon the business of conducting a private employment agency under the name of Central Employment Agency, located at No. 58 Griswold Street in the City of Detroit.

Section 6 of the Act in question provides, so far as important here:

> "No employment agent or agency shall send an applicant for employment to an employer who has not applied to such agent or agency for help or labor."

The usual manner of conducting these employment agencies is for the employer of labor to apply to the agency for a certain number of men. The agency sends to such employer such applicants for labor as he may have, charging his fee for procuring such employment to the laborer. It will therefore be seen that the first essential element for an honestly conducted employment agency is the application from the employer for a certain number of employees, and that to send a laboring man to a person not desiring labor not only consumes the time of the laborer, but works a fraud upon him. Moreover if the laborer should obtain employment from an employer who had not applied to the agency, the agent would be receiving a fee without performing any service. Not only that, but the agent might send the laborer to a distant city and thereby collect his fee from the laborer and the laborer would expend what little he had for transportation without any prospects of employment at the end of the trip. When honestly conducted, the employment agency served a useful purpose, that of getting employer and employee together, but the opportunity for fraud was, and is, so great, and the welfare of the community so dependent upon the welfare of the laboring class as that the Legislature of the State of Michigan in its wisdom provided for the regulation of the agency and prohibited such agency from sending laborers to employers who had not applied for help or labor. While the question of the wisdom of such legislation is not for the Court to determine, it seems to us that we may well say that this provision of the law was especially needed. It was for a

violation of this provision of the law that the defendant was prosecuted and convicted (R. 4, 5). The State Court held the Act to be a valid exercise of the police power of the State; the law to be a regulatory, licensing, (not revenue) measure; free from the claim of delegation of legislative and judicial functions; that the license fee should be pro-rated; and that the classification was not arbitrary or invalid. We shall discuss the case under three heads:

I. Is the Act within the police power of the State?
II. Is there a delegation of legislative and judicial power?
III. Classification.

I.

POLICE POWER.

We are impressed that the question of whether this law is a proper exercise of the police power of the State has been foreclosed by the decision of this Court in

Williams vs. Fears, 179 U. S. 370.

In this case a taxation statute of the State of Georgia, which levied a tax upon the business of immigrant agent, was involved. It was said by this Court (p. 275):

> "It would seem, moreover, that the business itself is of such nature and importance as to justify the exercise of the police power in its regulation. We are not dealing with single instances, but with a general business, and it is easy to see that if that business is not subject to regulation, the citizen may be exposed to misfortunes from which he might otherwise be legitimately protected."

So in the statute in the case at bar we are not dealing with single instances but with the general business, a business which deals entirely with the unfortunates, the men out of employment, the men seeking jobs, the illiterate, the foreigners who live in our great cities and upon whose welfare the welfare of the entire city to a very large degree depends. Under such circumstances it is within the police power of the State to regulate the business of employment agencies that the welfare of this class of the community and of the entire community dependent thereon may be better served. Upon this subject the language of Mr. Justice Holmes in

Engle vs. O'Malley, 219 U. S. 128;

is very pertinent. We quote from page 136;

> "On the other hand, experience has shown that the protection of such depositors against fraud, which is the purpose running through the statute, is especially needed by at least that class of them with whom the persons hit by the statute largely deal. The case cited establishes that the state may regulate that business, and may take strong measures to render it secure. It also establishes that the plaintiff has no such constitutional right to carry it on at will as to raise him above state laws not manifestly unfit to accomplish the supposed end, greatly in excess of the need, or arbitrary and capricious in discrimination. The quasi paternal relations shown in argument and by documents to exist between those following the plaintiff's calling and newly-arrived immigrants justifies a supervision more paternal than is needed in ordinary affairs. Whether the court thinks them wise or not, such laws are within the scope of the discretion which belongs to legislatures, and which it is usual for them to exert."

We also call attention to

Bacon vs. Walker, 204 U. S. 311.

In this case a statute of the State of Idaho was involved which prohibited the grazing of sheep within two miles of a dwelling house, and it was urged, and authorities were cited, that such legislation was beyond the police power of the State. After considering the cases cited, the Court said (p. 317):

> "These cases make it necessary to consider the argument of counsel based upon what they deem to be the limits of the police power of a State, and their contention that the statute of Idaho transcends those limits. It is enough to say that they have fallen into the error exposed in Chicago, Burlington & Quincy Railway Company vs. Drainage Commissioners, 200 U. S. 561, 592. In that case we rejected the view that the police power cannot be exercised for the general well-being of the community. That power, we said, embraces regulations designed to promote the public convenience or the *general prosperity,* as well as regulations designed to promote the public health, the public morals or the public safety. We do not enter, therefore, into the discussion whether the sheep industry is legitimate and not offensive. Nor need we make extended comment on the two-mile limit. The selection of some limit is a legislative power, and it is only against the abuse of the power, if at all, that the courts may interpose. But the abuse must be shown. It is not shown by quoting the provision which expresses the limit. The mere distance expressed shows nothing. It does not display the necessities of a settler upon the public lands. It does not display what protection is needed, not from one sheep or a few sheep,

but from large flocks of sheep, or the relation of the sheep industry to other industries. These may be the considerations that induced the statutes, and we cannot pronounce them insufficient on surmise on the barren letter of the statute."

Chicago B. & Quincy R. R. Co. vs. McGuire, 219 U. S. 578;

Involved the right of the State to prohibit contracts between the Railroad and its employees limiting liability for injuries made in advance of the injuries received and to provide that the subsequent acceptance of benefits under such contracts shall not constitute satisfaction of the claim for injuries received after the contract. The Act under consideration being an Act passed by the Legislature of the State of Iowa, we desire to call attention to it particularly because of the fact that the Court in the opinion quote the language of the Allgeyer case so frequently and so persistently urged upon the Court by Counsel for the complainant and then comments upon the same. We quote what was said by the Court at page 566:

"It has been held that the right to make contracts is embraced in the conception of liberty as guaranteed by the Constitution. Allgeyer vs. Louisiana, 165 U. S. 578; Lockner vs. New York, 198 U. S. 45; Adair vs. United States, 208 U. S. 161. In Allgeyer vs. Louisiana, supra, the court in referring to the Fourteenth Amendment, said (page 589): 'The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free to use them in all lawful ways; to live and work where he

will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.' But it was recognized in the cases cited, as in many others, that freedom of contract is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community."

In

Gundling vs. Chicago, 177 U. S. at page 188;

It was said by Mr. Justice Peckham speaking for the Court:

"Regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the various cities of the country, and what such regulations shall be and to what particular trade, business or occupation they shall apply, are questions for the State to determine, and their determination comes within the proper exercise of the police power of the State, and unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizen are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without the process of law, they do not extend beyond the power of

the State to pass, and they form no subject for Federal interference."

The case of

Kidd, Dater & Price Co. vs. Musselman Grocer Co., 217 U. S. 461;

Involved the validity of the Michigan Bulk Sales Act. The Act was contested upon the ground that its provisions were without the police power of the State. It was, however, upheld. The syllabus being sufficient to show what was decided, we quote it:

"It is within the police power of the State to require tradesmen making sales in bulk of their stock in trade to give notice to their creditors and also to prescribe how such notice shall be given, and unless the provisions as to such notice are unreasonable and arbitrary a statute to that effect does not amount to a deprivation of property, abridge liberty of contract or deny equal protection of the law within the meaning of the Fourteenth Amendment; nor is the requirement in the Michigan Sales-in-Bulk Act of 1905 that such notice be either personal or by registered mail unreasonable or arbitrary."

In addition to the authorities already cited, we call attention of the Court to

Powell vs. Pennsylvania, 127 U. S. 678;
People vs. Wagner, 86 Mich. 594;
Ash vs. People, 11 Mich. 349;
Grand Rapids vs. Braudy, 105 Mich. 670.

See also

Rast et al. vs. VanDeman & Lewis Co., et al., decided March 6th, 1916;

Tanner et al. vs. Little et al., decided March 6th, 1916;
Pitney vs. City of Washington, decided March 6th, 1916;

Involving the validity of Trading Stamp Acts.

The question of the right of a State under the police power to regulate the business of employment agents has been before the court of last resort in but few of the States. The case of

Moore et al. vs. City of Minneapolis, 43 Minn. 418;

appears to have been the first adjudication with respect to the constitutionality of a general employment agency ordinance. The City Council of the City of Minneapolis had been empowered by a special legislative Act to license and regulate the business of employment agencies, and under such authority a city ordinance was adopted. The said ordinance provided a license fee of one hundred fifty dollars when the license was to extend to the employment of males without territorial limits or females elsewhere than in the counties of Hennepin and Ramsey. The constitutionality of the ordinance was attacked upon the ground that the same was an unlawful restraint of legitimate business and was the taking of property without due process of law. Mr. Justice Dickinson in rendering the opinion of the court sustaining the constitutionality of the ordinance, said in part:

> "The business was a proper subject of police regulation and control. The nature of the business, and the character of those with whom the business is likely to be conducted in point of intelligence, experience and capacity for self-protection from fraudulent practices are such that it might well be deemed necessary by the legislature, as a matter of proper police regulation, that, by means of a license system, dishonest and dis-

reputable persons should, so far as possible, be excluded from the right to engage in the business, and that the conduct of the business be so regulated as to afford means for the detection of fraudulent practices and for redress for wrongs done. The propriety of police regulation seems apparent when it is considered that by means of such agencies, ignorant and credulous people might easily be defrauded of their money under a mere pretense of employment to be afforded them in a distant part of the State, so that the fraud would not be discovered until the victim had gone so far away as to be unlikely to trouble the fraudulent agent by prosecution. Again, such business might be resorted to as a means of bringing girls into places unfit for their employment or presence. * * * *

This decision was rendered in the year 1890. In a later case, namely:

Moore et al. vs. City of St. Paul, 48 Minn. 331;

This ordinance was not held unconstitutional upon the theory that it was not a proper subject of police regulation, but solely for the reason that the section imposing a license fee of $150 made no provision for a pro rata payment for less time than the full license year. It will appear from an examination of the opinion in this case that the court did not determine or intimate that such regulation was not within the police power. This decision was rendered during the year 1892. The next time the subject-matter was before a court of last resort was in the case of

Price vs. People, 193 Ill. 114; 55 LRA. 588.

This case was decided in the year 1901 and involved the constitutionality of Section 10 of an Act of the General As-

sembly of the State of Illinois. The sole question before the court was that of the validity of the Section requiring a license fee of Two Hundred Dollars per annum for maintaining a private employment agency, with the further provision for a bond of One Thousand Dollars for the faithful performance of the duties of private employment agents. The court upheld the constitutionality of the Act and held that the same was no violation of the State or Federal Constitutional provisions requiring that "No person shall be deprived of life, liberty or property without due process of law." Justice Briggs, in delivering the opinion of the court, said in part:

> "But the courts always proceed with great hesitation and caution in passing upon the validity of the enactment of the General Assembly. Primarily, we assume the law-making body considered the effect of the proposed enactment upon the constitutional rights of the citizen, and that it acted from patriotic and just motives, and, in fixing the amount of the fee to be paid as a prerequisite to the right to a license to pursue the calling of an employment agent, acted upon proper consideration and in the exercise of honest intentions. The requirements that a bond shall be given conditioned for the faithful performance of the duties of employment agent, and that a license shall be secured, are within these matters of regulation. * * * What amount the applicant for a license shall be required to pay as a license fee is plainly submitted to the General Assembly for determination, and the action of that department of the State government is conclusive, except, beyond serious doubt, it is manifest that the amount of the fee has been in any particular instance established, not with regard to the purpose of regulation of the occupation with the view of protecting the public welfare, but with a real purpose to raise revenue

> under the guise of the police power, or to subvert the proper exercise of that power to the prohibition, by means of oppressive license fees, of the right of the citizen to exercise a lawful calling in violation of the constitutional guarantees against the destruction of the liberty and property right of a citizen. This court would not assume to enter upon the consideration of the question, pure and simple, whether the legislative mind and judgment were at fault in determining the amount to be required as a license fee for the purpose of regulating an occupation in the interest of the welfare of the public. If errors or defects of this character exist in an enactment, the remedy is by way of an application to the General Assembly, when again convened, for the repeal or modification of the ill-advised provision."

It should be noticed in considering this case that the Illinois statute, there considered, purported not only to regulate private employment agencies, but also provided for free public employment agencies, and the statute was again before the Supreme Court of Illinois in the case of

Mathews vs. People, 208 Ill. 189; 63 L. R. A. 73.

This statute, with respect to the establishment of free employment agencies to be maintained at public expense, forbade those in charge to furnish help to persons whose employes were on a strike or locked out, or to permit them to have access to the names of applicants for service, while giving this privilege to other employers. The Court in this case held the statute unconstitutional because of this exception last stated, taken in connection with the further clause that prohibited private employment agencies, except under a heavy license fee, since it was evident from the entire act,

that the free agencies would not have been created unless the employers were on a strike or were locked out, were to be excluded from the benefits of the Act. It was therefore held that the provision forbidding private agencies without a heavy license fee was also void as its evident purpose was to aid in carrying out the discriminating provisions of the statute. This case consequently over-ruled that of Price vs. People, but the doctrine laid down in Price vs. People, when standing alone, and independent of the discriminatory features of the statute was not assailed.

The subject-matter was again before the court in the case of

Ex parte C. E. Dickey, 144 Cal. 234; 66 L. R. A. 928.

This decision was rendered during the year 1904. In this case, the majority opinion was to the effect that the legislature could not limit the charges which the owner of an employment agency might make for his services. This opinion is based upon the proposition that the business is not only legitimate, but is also a necessary calling, and any attempt to regulate by requiring a license fee is the taking of property without due process of law and abridgment of the right of contract. A dissenting opinion was rendered in the case by Justice Shaw to the effect that this was a proper subject of regulation and that it was within the police power of the State to impose such regulation by the requiring of a license fee. Justice Shaw comments upon previous decisions of the court in upholding regulation with reference to money-lenders, pawn-brokers, and mine owners. He says in part:

> "I can see no real distinction between laws of the character above considered and the one here involved. If one who desires to borrow money, or the miner in an underground mine—the one having property to pledge, and the other being already employed— are

likely, from their necessities, to submit to unjust exactions by those with whom they deal, how much more likely to do so is the person who is out of employment, who depends on his daily wages or monthly salary for his daily bread, and who sees before him starvation for himself and a dependent family if he does not speedily secure remunerative employment. The number of this class of persons far exceeds the number of those who borrow from the pawnbrokers, or those who work underground in the mines. The general welfare and prosperity of the community will be affected in proportion to the numbers of the class which is subject to the oppression and exactions of the more fortunate and prosperous. It is upon the same principle that authority is found for the power of the legislature to restrict and limit the right of persons to make such contracts as they please in many other respects. Thus the legislature may provide that oral contracts, for the sale or conveyance of real estate, or of personal property above a certain value, or to pay commissions to a real estate agent for negotiating a sale, shall be void, or that certain classes of contracts for the erection of buildings or other structures, unless put in writing and filed for record, shall be invalidated in part, and that certain stipulations in such contracts although in writing, shall be void as against persons claiming a lien on the premises. All these constitute instances of the exercise of legislative power to interfere with the liberty to make contracts, the reason being that the general welfare will be promoted by such interference.

It is of course, not to be denied that there are just limitations to the exercise of the power of the protection of the unfortunate and weak. It is not absolutely free from the supervision of the courts. But we

cannot hold the law void because we may think it may prove ineffectual for the purpose intended, owing to the refusal of those to whom it is directed, or for whose benefit it was designed, to obey its mandates. The validity of the law is to be determined upon the assumption that it will be obeyed. The possibility of its enforcement is a matter solely for the legislature to consider when the law is enacted. Nor can we place our own judgment against that of the legislature in respect to the necessity for the protection which the legislature has seen fit to provide, unless we can clearly see that there can be no such necessity. 'Though reasonable doubts may exist as to the power of the legislature to pass a law, or as to whether the law is calculated or adapted to protect the health, safety, or comfort of the people, or to secure good order, to promote the general welfare, we must resolve them in favor of the right of that department or government.' Holden vs. Hardy, 169 U. S. 391, 42 L. Ed. 890, 18 Sup. Ct. Rep. 383. To quote further from the same case (p. 398, 169 U. S., p. 793, 42 L. Ed., and p. 390, 18 Sup. Ct. Rep). 'The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular case.' With these rules for our guidance, there can be but one answer to the question as to the constitutionality of this law. In the light of history, and even in the face of present conditions, we cannot say that the law was not passed in the exercise of a reasonable discretion, nor that there may not exist a reasonable necessity for the protection of those classes which are peculiarly liable to be thrown out of employment at every check to the current of industrial progress, from the possible rapacious

demands of those to whom they are generally compelled to apply for another opportunity to earn subsistence by their toil. For these reasons, I am of the opinion that the law under consideration is valid."

The opinions rendered in this case, both majority and minority, are respectfully referred to the court's attention. We believe that the minority opinion is the correct statement of the law, and one that is in conformity with the general doctrine laid down in those states wherein the matter has been passed upon.

The subject-matter was again before the New York Court of Appeals in the case of

People ex rel. Armstrong vs. Warden; 183 N. Y. 223.

in the year 1905, and is reported in 2. L. R. A. (N. S.) page 859. The statute there in question was similar to Act 301 of 1913 here under consideration. The constitutionality of the same was upheld by the New York Court, the opinion being delivered by Justice O'Brien. The same is brief and we quote the opinion as delivered:

"The courts below have dismissed a writ of habeas corpus sued out by the relator to inquire into the case of his imprisonment and to be discharged therefrom. The defendant made return to the writ to the effect that he detained the relator in his custody by virtue of a warrant of commitment made by one of the city magistrates of the City of New York on the 31st day of March, 1905, and a copy of the warrant was annexed to the return and made a part thereof. After a hearing upon the petition, the return, and the writ, the court decided that the relator was properly committed, and the order was affirmed on appeal. There is no dispute whatever about the facts, and the relator's con-

tention raises simply a question of law. He was detained upon the warrant of commitment by virtue of a judgment or order made by the committing magistrate on the hearing of complaint against him for violation of a statute. The statute is chapter 432 of the Laws of 1904, and is entitled 'An Act to Regulate the Keeping of Employment Agencies in the Cities of the First and Second Class where Fees are charged for procuring Employment or Situations.' The statute contains 10 sections, and purports to regulate the business of employment agencies in the cities mentioned in the title in various ways not necessary here to enumerate. The question in this case turns upon the 2nd section, which reads as follows: 'No person shall open, keep, or carry on, any such employment agency in the cities of the first and second class, unless every such person shall procure a license therefor from the mayor of the city in which such person intends to conduct such agency. Any person who shall open or conduct such an employment agency without first procuring said license shall be punishable by a fine not exceeding $250.00, or, on failure to pay such fine, by imprisonment not exceeding thirty days. Such license shall be granted upon the payment to said mayor of a fee of $25.00 annually for such employment agencies in cities of the first and second class.' It is admitted that the relator kept an employment agency in the City of New York, and was engaged in that business without having procured any license from the mayor, or having complied in any respect with the provisions of the statute.

The relator insisted in the courts below, and insists in this court, that the statute upon which the commitment is based is void, as in conflict with the state and federal constitutions. It is argued that it is in conflict with the equal rights clause of the 14th amendment of

the Federal Constitution, since it applies only to cities in the first class and second class. But it seems to be well settled in this court and in the Federal court that the equality within the contemplation of the 14th Amendment does not necessarily include a territorial equality, and that legislation which though limited in the sphere of the operations, affects all persons similarly situated within such sphere, is valid. People vs. Havnor, 149 N. Y. 195, 31 L. R. A. 689, 52 Am. St. Rep. 707, 43 N. E. 541; Mallet vs. North Carolina, 181 U. S. 589, 45 L. ed. 1015, 21 Sup. Ct. Rep. 730; Barbier vs. Connolly, 113 U. S. 27, 28 L. ed. 923, 5 Sup. Ct. Rep. 357; Williams vs. People, 24 N. Y. 405. Criminal laws are not necessarily unconstitutional, even if they bear equally upon persons in different parts of the State. The evil which the legislature may have in view in passing such laws may exist only in great cities of the State, and have no existence in rural districts.

The other objection made by the relator to the validity of the statute presents a question which has been very much discussed in this court, as well as in other courts, and that is that the statute interferes with the relator's rights to carry on a lawful business without being hampered by statutory regulations. The cases are abundant which hold that the individual has the right to carry on any lawful business, or earn his living in any lawful way, and that the legislature has no right to interfere with his freedom of action in that respect, or otherwise place restraints upon his movements. But of course, these cases must all be understood as applying to laws that are not within the police power. If the statute comes fairly within the scope of the police power, it is a valid law, although it may interfere, in some respects, with the liberty of the citizen, which, of course, includes his right to follow

any lawful employment. A statute to promote the public health, the public safety, or to secure public order, or for the prevention or suppression of fraud, is a valid law, although it may in some respects interfere with individual freedom. All business and occupations are conducted subject to the exercise of the police power. Individual freedom must yield to regulations for the public good. It may be laid down as a general principle that legislation is valid, which has for its object the promotion of the public health, safety, morals, convenience, and general welfare, or the prevention of fraud or immorality. We think that such is the character of the statute in question. It was intended to regulate employment agencies in cities. The legislature had the right to take notice of the fact that such agencies are places where emigrants and ignorant people frequently resort to obtain employment and to procure information. The relations of a person so consulting an agency of this character with the managers or persons conducting it are such as to afford great opportunities for fraud and oppression, and the statute in question was for the purpose of preventing such frauds, and probably for the suppression of immorality.

We think that the objections to the statute are not well founded, that it is a valid law, and therefore the order should be affirmed."

The subject-matter was again before a court of last resort in the case of

Spokane vs. Macho, 51 Wash. 322; 21 L. R. A. (N. S.) 263.

The question there involved the constitutionality of a municipal ordinance of the City of Spokane regulating employ-

ment agencies. The precise question involved was with respect to the clause of the city ordinance providing a penalty for the violation of its terms. The Court said:

> "The ordinance before us assumes to license and regulate the business of employment agencies. This has been held to be a proper exercise of the police power of the State. Price vs. People, 193 Ill. 114; 55 L. R. A. 588, 86 Am. St. Rep. 306, 61 N. E. 844.
>
> But section 7 goes further. It defines a common law crime and provides a penalty for its infraction—not for all who may be guilty of a like offense, but the employment agency who shall by wilful misrepresentation or deceit obtain money of another. It cannot be denied that the business of the employment agent is a legitimate business, as much so as is that of the banker, broker or merchant; and, under the methods prevailing in the modern business world, it may be said to be a necessary adjunct in the prosecution of business enterprise. The vice of the section under discussion lies in this: That it makes an act criminal in one who may be engaged in a lawful business, while the act committed under like circumstances by another may not be so. A business may be classified by ordinance under the police power of a state if the object of the legislation is revenue, and all necessary and proper penalties may be provided to insure its due enforcement. But, if the object is regulating merely, such classification will not be tolerated. Re Camp, 38 Wash. 393, 80 Pac. 547. It was frankly admitted in the argument of this case that Section 7 was enacted for the purpose of regulating the business of employment agencies. When exercising its power to regulate a business, the municipality may classify subjects of legislation, but the law must treat alike all of a class

to which it applies, and must bring within its classification all who are similarly situated or under the same condition. From the very nature of things there can be no dissimilarity of condition or situation between the employment agent who indulges in a false pretense from any other person who resorts to deceit or fraudulent representations to accomplish a wayward purpose. 'The classification must be based on some reason suggested by a difference in the situation and circumstances of the subjects treated, and no arbitrary distinction between different kinds of classes or business can be sustained, the conditions being otherwise similar.' State ex rel McCue vs. Ramsey County, 48 Minn. 236, 31 Am. St. Rep. 650, 51 N. W. 112. Under the rule just quoted, those engaged in a business lawful and orderly in itself, although subject to license and regulation, cannot be made a class upon which a penal statute shall operate to the exclusion of others, for the crime defined is not peculiar to the business of employment agencies, but common to all, and, to be sustained, must include within its terms all who may likewise be guilty. It has been held that 'an ordinance, therefore, which would make an act done by one penal, and impose no penalty for the same act done under like circumstances upon another could not be sanctioned or sustained because it would be unjust and unreasonable.' "

It will be noticed that the section discussed really defines a common law offense, namely, the obtaining of money under false pretenses, and attempted to provide a different penalty for employment agents than is imposed upon others committing a like offense. Act 301 of the Public Acts of 1913 is not open to this objection, the penalty clause of said act not covering an offense which was such at the common law, inas-

much as the penalty is not limited to those receiving a fee for such false and deceiving statements, hence no unjust discrimination or distinction is made.

We deem it unnecessary to take up the time of the court in extended discussion of the proposition as to whether the business of an employment agent is of such a nature that harmful and vicious results may and very often do follow from the wrongful conduct of such business. We know of thousands of people are today compelled to resort to such agencies in order that they may secure necessary employment for the support of themselves and family, and that this is especially true in the larger cities of our country because it is practically impossible for such persons seeking employment to know where the same may be found. For this reason it has become a practical necessity that the matter be systematized and this has been done through the medium of employment agencies, public and private. As was well said by Justice Shaw in the California case: "The number of this class of persons far exceed the number of those who borrow from the pawnbroker or those who work underground in the mines. The general welfare and prosperity of the community will be affected in proportion to the numbers of the class which is subject to the oppression and exactions of the more fortunate and prosperous." We might cite instance after instance in the State of Michigan where laboring men seeking employment have parted with their hard earned money in return for a promise of employment oftentimes at a distant point in this State or outside of the State, and after arriving at their destination have found work which they could not do or possibly no work at all. Hundreds of men have been sent into the Canadian Northwest by employment agents in the State of Michigan under representations which were entirely false and, as a result, such laborers have been compelled at various times to seek assistance from Canadian authorities. This has been a matter of public knowledge and as a result com-

plaints have been made by the Dominion Government to the Government of the United States. It would be entirely safe to say that thousands of laboring men are paying money every week to employment agents in the City of Detroit, alone, in return for the securing of positions. The prosperity and welfare of the city would seem to demand that these people be protected and be not imposed upon by unscrupulous persons who may be following the occupation or calling of employment agent. Without subscribing to the doctrine of governmental paternalism, we believe the rule of protection by the government to a class upon which the welfare of society must depend, especially when that class is unable as a practical matter to protect itself, to be well grounded and within the discretion of the law-making power of a State or nation to impose.

II.

DELEGATION OF LEGISLATIVE AND JUDICIAL POWER.

It is too late in the day to insist that the power given to administrative Boards, Commissions and Officers to determine questions of fact and to make proper alministrative rules is the delegation of legislative and judicial power. Practically every Railroad Commission Act in the Union has been assailed on this ground; practically every new Board that has been created with power to determine facts has been assailed upon this ground and the Courts with unanimity have declined to sustain these contentions. It will be unnecessary, as we view it, to cite all, or any considerable number of these cases.

Union Bridge Co. vs. United States, 204 U. S. 364;

May be regarded as typical of the cases where an adminis-

trative officer was authorized to determine the fact as a basis of administrative action. In this case the Court had under consideration the provisions of the River and Harbor Act of 1899 which provided for the removal or alteration of bridges which unreasonably obstructed navigation. The Secretary of War was given the power to determine the fact as to whether such bridges were an obstruction to navigation after giving the parties an opportunity to be heard. It will therefore be seen that upon the finding of the Secretary of War that a bridge was an obstruction to navigation the bridge company would be required to remove such obstruction and would therefore be damaged in many instances to a very large amount, and it was urged that the power to regulate commerce was one of the powers surrendered to Congress by the States and that commerce included navigation, and that, therefore Congress alone could make the determination and could not impose upon an executive officer the duty of ascertaining in what particular cases the obstruction to navigation occurred because there would be a delegation of legislative and judicial power. This Court declined to follow such contention but held that the Secretary of War in determining the fact was acting in an administrative capacity and was performing neither legislative nor judicial functions. The early case of the

Railroad Commission cases, 116 U. S. 307,

which involved the validity of the Mississippi Railroad Commission Act, fully discusses and considers this objection. In addition to these authorities we might cite

Oregon R. & M. vs. Campbell, 173 Fed. 957;
Hubbel vs. Higgins, 148 Ia. 36;
State vs. Railway Co., 76 Kan. 467;

and the following Michigan cases:

Kennedy vs. State Board of Registration, 145 Mich. 241;

Michigan Central R. R. Co. vs. Railroad Commission, 160 Mich. 355;

Feek vs. Township Board of Bloomingdale, 82 Mich. 393;

Sherlock vs. Stewart, 92 Mich. 193;

The last cited case involved the question as to the power of the State to delegate to a municipality the determination of the question as to whether a party was a suitable party to conduct a saloon in the City of Grand Rapids. It was said by the Court at page 198:

> "Under this comprehensive police power of the State it is, in my judgment, too clear for argument that the legislature may confer upon municipalities the right to determine the places where saloons may be kept, and to determine that question upon each application. The legislature may also enact that only reputable persons shall be allowed in the business, and may authorize the municipalities to determine the question of fitness. If the State possesses this right, the power to determine these questions must, in the first instance, be lodged in the municipality, or some board representing it, or in some other body or court. There is no presumption that the persons charged with this duty will not perform it, or that they will abuse the discretion given them."

But the plaintiff in error is in no position to raise the question here. He has been in no way harmed; he has made his application to the labor commissioner for a license, which application has been granted; he has filed his bond pursuant to the terms of the Act in question, and is here reviewing a

conviction of a provision of the Act which applies to a licensed employment agency. So he is not in a position to criticize this provision of the law.

III.

CLASSIFICATION.

The Act in question provides that in cities of over two hundred thousand inhabitants the license fee shall be $100, while in cities under two hundred thousand the license fee is $25. There is but one city in the State exceeding in population two hundred thousand inhabitants, that being the City of Detroit with a population of between six and seven hundred thousand. There is nothing upon this record indicative in the slightest degree that the fee of $100 per annum in the City of Detroit is out of proportion to the cost of inspection, regulation and policing in that City. As was said by Mr. Justice Brooke:

> "The Act operates upon all citizens alike, except that a larger sum is charged for the license in larger cities than in smaller ones. Wherever the fee for the license is charged primarily for the purpose of revenue a variable sum may be fixed to meet the varying conditions under which the licensee operates. 25 Cyc. p. 608, and cases cited in note 74. It may well be that the legislature appreciated the fact that inspection for the purpose of proper regulation in large cities would be much more expensive than such inspection in smaller cities, and that the larger sum was fixed for the purpose of meeting such added expense of administration."

Population has always been recognized as a basis of classification and it goes without saying that in the great indus-

trial city of Detroit, with its thousands of laboring men, the expense of policing, inspecting and regulating the employment agencies is greater than in the smaller cities of the State where the laborers are few in number. It was stated in the brief in the State Court that at the time this Act was passed there were fifty thousand idle laboring men in that city. It is a matter of common knowledge that regulations may be required where the population is congested that are unnecessary in the sparsely settled parts of the State. It is for the State, and the State alone, to determine what special legislation may be required to fit the locality so long as that legislation is not arbitrary and without any reasonable basis. Upon this question we call attention of the Court to

Hayes vs. Missouri, 120 U. S. 68;

This Court there had under consideration a statute of the State of Missouri which gave to the prosecution fifteen peremptory challenges in cities of over one hundred thousand population in capital cases and limited the number to eight in cities before one hundred thousand population. It was urged that this offended the Fourteenth Amendment, but it was said by Mr. Justice Field, speaking for the Court (p. 71):

> "The Fourteenth Amendment to the Constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. As we said in Barbier v. Connolly, speaking of the Fourteenth Amendment: 'Class legislation, discriminating against some and favoring

> others, is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the Amendment.' 113 U. S. 27, 32 (28, 923, 925)."

Lieberman vs. Van De Carr, 199 U. S. 552;

Is an interesting case not only upon the question of classification but also upon other question involved here. Lieberman was prosecuted for a violation of the Sanitary Code of New York City which provided among other things for the licensing of dealers in milk; he was convicted upon a charge of selling milk without a license. We quote from the opinion of Mr. Justice Day, at page 563:

> "We have, then an ordinance which, as construed in the highest court of the State, authorizes the exercise of a legal discretion in the granting or withholding of permits to transact a business, which, unless controlled, may be highly dangerous to the health of the community, and no affirmative showing that the power has been exerted in so arbitrary and oppressive a manner as to deprive the appellant of his property or liberty without due process of law.
>
> In such cases it is the settled doctrine of this court that no Federal right is invaded, and no authority exists for declaring a law unconstitutional, duly passed by the legislative authority and approved by the highest court of the State. Nor do we think that there is force in the contention that the appellant has been denied the equal protection of the laws, because of the allegation that the milk business is the only business dealing in foods which is thus regulated by the sanitary code. All milk dealers within the city are equally

affected by the regulations of the sanitary code. It is primarily for the State to select the kinds of business which shall be the subjects of regulation, and if the business affected is one which may be properly the subject of such legislation, it is no valid objection that similar regulations are not imposed upon other businesses of a different kind. Soon Hing v. Crowley, 113 U. S. 703; Fisher v. St. Louis, 194 U. S. 361."

In addition, we also cite:

Quong Wing vs. Kirkendall, 123 U. S. 59;
25 Cyc. 608;
State v. O'Hara, 36 La. Ann. 93;
Texas Banking Co. vs. State, 42 Texas 636;
State vs. Schlier, 3 Heisk (Tenn.) 281;
State vs. Gloucester County Circuit Judge, 50 N. J. L. 585.

These cases distinguish regulatory licensing statutes or ordinances from those statutes or ordinances imposing a license fee, mainly for the purpose of revenue, and where they may be regarded as a taxation measure in the constitutional sense. The classification provided in this act is not arbitrary, but it is fair to presume that the legislature believed that conditions were such in larger cities that more regulation with reference to this class of business would be required than in smaller communities and graduated the license fee accordingly.

We have not been favored with the brief of the plaintiff of error in this Court and therefore can not consider in this brief the authorities which may be cited in addition to those cited in the State Court. We desire, however, to briefly take up the authorities which were cited by the plaintiff in error

in the Court below. We have already considered those cases which deal directly with the question of employment agencies and will now briefly discuss the authorities which were cited by the plaintiff in error in the Court below.

People vs. Valentine, 124 Mich. 664;

Was cited to the Court below by the plaintiff in error. In that case Act 251 of the Public Acts of 1899 of the State of Michigan was before the Court. This was an Act requiring merchants, who sell farm produce upon commission, to file a bond in the penal sum of Five Thousand Dollars conditioned for the faithful performance of the trust reposed in them as commission men or brokers, to pay over all moneys, to the proper parties, coming into their hands by virtue of such agency or trusteeship. The court held this act unconstitutional, but it is apparent from an examination of the decision that the subject-matter therein involved was not of the same nature as in the case at bar and that the ruling there made should have no application in this case. Act 251 of the Public Acts of 1899 attempted to legislate with respect to a certain class within a class, namely those commission merchants handling farm or dairy produce, and was, therefore, as pointed out by the court clearly class legislation. If the Act here in question was one regulating employment agencies who furnished employes to farmers or automobile manufacturers, the ruling made in the Valentine case would be applicable. The act in question does not single out any particular class of employment agents, neither is any exception made, but applies with equal force to all persons engaging in such business and under the uniform holding of this and other courts is not open to objection as class legislation.

State vs. Moore, 113 N. C. 697;

Was also cited in the State Court. The Act here considered provided a license fee of One Thousand Dollars. Such fee was required in part of the State only; the division was arbitrary and was made by a line passing through the State. The Court held that no reason existed for such division and that it was purely arbitrary and restrictive. No regulation, examination, et cetera, was required by the act but an examination of this decision will disclose that in the opinion of the court a reasonable license fee for police regulation of immigrant agents would be proper. But the Supreme Court of North Carolina reached a different conclusion and practically overrules the doctrine laid down in the Moore case in the later case of

State vs. Carter, 129 N. C. 560;
Chaddock vs. Day, 75 Mich. 527;

Was also cited in the Court below. The Michigan Supreme Court in that case found as a matter of fact that the imposition of Ten Dollars a day as a license fee was not an attempt to regulate under the police power but was simply a scheme to prevent competition with meat dealers.

Maine vs. Mitchell, 97 Me. 66;

Involved the validity of a hawkers and peddlers license law. The Act exempted from payment resident dealers paying over Twenty-five Dollars taxes. Because of this feature, the act was held arbitrary and unjustly discriminatory.

Williams vs. Mayor, 2 Mich. 568;

Was a monoply tax case and did not deal with the subject of license. The tax was held good.

Robinson v. Miner, 68 Mich. 566;

Was a case involving the constitutionality of the liquor license law and the language quoted was used in connection with that provision of the statute permitting county treasurers to determine in what contingency they should require new bonds. The Act did not provide for a hearing as does the Act in question.

Butchers Union Slaughter House and Live Stock Co. vs. Crescent Live Stock & Slaughter House Co., 111 U. S. 746;

Dealt solely with the question as to the legislative grant. The court held that a grant of monoply was not within the legislative authority. No question of restriction, inspection or regulation was involved.

State of Missouri vs. Loomis, et al., 115 Mo. 307;

Involved the construction of a statute making it a misdemeanor for any corporation, person or firm engaged in manufacturing or mining to issue in payment of its laborers any order, check, memorandum, token or evidence of indebtedness payable otherwise than in lawful money of the United States. Inasmuch as this attempted regulation did not apply to other employers of labor but dealt solely with manufacturing companies, it was held class legislation. A dissenting opinion was rendered by Justice Barclay. This opinion cited among other authorities

People vs. Wagner, supra.

We have not discussed the question as to whether the Act was invalid because of defective title under the Michigan Constitution, or the correctness of the conclusion of the

Michigan Court that the license fee was apportionable. Both of these questions are for the State Court and are not involved here.

We respectfully submit that the Act under consideration is a valid exercise of the police power of the State, is free from the claim of delegation of legislative and judicial power, is not class legislation and in no-wise conflicts with any rights of the plaintiff in error under the Federal Constitution, and that the decision of the State Court should be affirmed.

GRANT FELLOWS,
Attorney General.
DAVID H. CROWLEY,
Assistant Attorney General.
Attorneys for Defendant in Error.

BRAZEE *v.* PEOPLE OF THE STATE OF MICHIGAN.

ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

No. 402. Argued April 6, 1916.—Decided May 22, 1916.

A State, exercising its police power, may require licenses for employment agencies and prescribe reasonable regulations in respect to them to be enforced according to the legal discretion of a commissioner.

The provisions in Public Act No. 301 of Michigan of 1913, imposing a license fee to operate employment agencies and prohibiting employment agents from sending applicants to an employer who has not applied for labor, are not unconstitutional as depriving one operating an employment agency of his property without due process of law or as denying him the equal protection of the laws.

Provisions in the statute limiting fees that may be charged by those licensed thereunder are severable, and might, if unconstitutional, be eliminated without destroying the statute.

The validity of severable provisions of the statute involved in this case not having been raised by the charge against one violating it, and not having been considered by the court below, has not been considered by this court.

183 Michigan, 259, affirmed.

THE facts, which involve the constitutionality under the Fourteenth Amendment of Public Act No. 301 of 1913 of Michigan, imposing licenses on the conducting of employment agencies, are stated in the opinion.

Mr. Proctor Knott Owens for plaintiff in error:

The provision in § 5 of the statute is unconstitutional in that it abridges the right and liberty to contract, and is a denial of due process of law. The whole act is unconstitutional under the Fourteenth Amendment.

The penalty provisions of the statute are unconstitutional.

The facts are reviewable by this court.

The case is one of unjust discrimination.

For applicable cases on the Fourteenth Amendment see, *Dingeman* v. *Lacy*, 180 Michigan, 129; *Butchers Union* v. *Crescent Live Stock Co.*, 111 U. S. 746; *Chicago* v. *Umpff*, 45 Illinois, 90, 92; *Ex parte Dicky*, 144 California, 234; *In re Grice*, 79 Fed. Rep. 627; *In re Chaddock*, 75 Michigan, 527; *Kelleyville Coal Co.* v. *Harrier*, 207 Illinois, 624; *Leep* v. *Railway Co.*, 38 Arkansas, 407; *Brown* v. *Cook County*, 84 Illinois, 590; *Matthews* v. *The People*, 202 Illinois, 389; McQuinlan, Municipal Ordinance, 193; *Missouri* v. *Loomis*, 115 Missouri, 307; *Ohio Life Ins. Co.* v. *De Bolt*, 16 How. 431; *People* v. *Gilson*, 109 N. Y. 389; *Valentine* v. *Berrien County*, 124 Michigan, 664; *People* v. *Wilson*, 249 Illinois, 195; *Scowden's Appeal*, 96 Pa. St. 422; *Spring Valley Water Co.* v. *San Francisco*, 165 Fed. Rep. 667; *Maine* v. *Mitchell*, 97 Maine, 66; *State* v. *Moore*, 113 N. Car. 697; *State* v. *Sheriff*, 48 Minnesota, 236; *San Antonio* v. *McHaffy*, 96 U. S. 315; *Spokane* v. *Macho*, 51 Washington, 322; *Tugman* v. *Chicago*, 78 Illinois, 405; *Moore* v. *St. Paul*, 48 Minnesota, 332; *William* v. *Mayor*, 2 Michigan, 568; *Yick Wo* v. *Hopkins*, 118 U. S. 356.

Mr. Grant Fellows, Attorney General of the State of Michigan, with whom *Mr. David H. Crowley* was on the brief, for defendant in error.

Mr. Justice McReynolds delivered the opinion of the court.

Brazee having taken out a license to conduct an employment agency in Detroit under Act 301, Public Acts of Michigan, 1913, was thereafter convicted upon a charge of violating its provisions by sending one seeking employment to an employer who had not applied for help. He claimed the statute was invalid upon its face because in

conflict with both state and Federal Constitutions, and lost in both trial and Supreme Courts. 183 Michigan, 259. Now he insists it offends that portion of the Fourteenth Amendment which declares, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The general purpose of the act is well expressed in its title—"An Act to provide for the licensing, bonding and regulation of private employment agencies, the limiting of the amount of the fee charged by such agencies, the refunding of such fees in certain cases, the imposing of obligations on persons, firms or corporations which have induced workmen to travel in the hope of securing employment, charging the Commissioner of Labor with the enforcement of this act and empowering him to make rules and regulations, and fixing penalties for the violation hereof." It provides: Sec. 1. No private employment agency shall operate without a license from the Commissioner of Labor, the fee for which is fixed at $25 per annum except in cities over two hundred thousand population, where it is $100; this license may be revoked for cause; the Commissioner is charged with enforcement of the act and given power to make necessary rules and regulations. Sec. 2. A surety bond in the penal sum of one thousand dollars shall be furnished by each applicant. Sec. 3. Every agency shall keep a register of its patrons and transactions. Sec. 4. Receipts containing full information regarding the transactions shall be issued to all persons seeking employment who have paid fees. Sec. 5. "The entire fee or fees for the procuring of one situation or job and for all expenses, incidental thereto, to be received by any employment agency, from any applicant for employment at any time, whether for registration or other

purposes, shall not exceed ten per cent. of the first month's wages;" no registration fee shall exceed one dollar and in certain contingencies one-half of this must be returned. Sec. 6. "No employment agent or agency shall send an applicant for employment to an employer who has not applied to such agent or agency for help or labor;" nor fraudulently deceive any applicant for help, etc. Sec. 7. No agency shall direct any applicant to an immoral resort or be conducted where intoxicating liquors are sold. Sec. 8. Violations of the act are declared to be misdemeanors and punishment is prescribed.

The Supreme Court of Michigan held "the business is one properly subject to police regulation and control;" the prescribed license fee is not excessive; provisions of the state constitution in respect of local legislation are not infringed; and no arbitrary powers judicial in character are conferred on the Commissioner of Labor. But it did not specifically rule concerning the validity of limitations upon charges for services specified by § 5.

Considering our former opinions it seems clear that without violating the Federal Constitution a State, exercising its police power, may require licenses for employment agencies and prescribe reasonable regulations in respect of them to be enforced according to the legal discretion of a commissioner. The general nature of the business is such that unless regulated many persons may be exposed to misfortunes against which the legislature can properly protect them. *Williams* v. *Fears*, 179 U. S. 270, 275; *Gundling* v. *Chicago*, 177 U. S. 183, 188; *Lieberman* v. *Van de Carr*, 199 U. S. 552, 562, 563; *Kidd, Dater Co.* v. *Musselman Grocer Co.*, 217 U. S. 461, 472; *Engel* v. *O'Malley*, 219 U. S. 128, 136; *Rast* v. *Van Deman & Lewis*, 240 U. S. 342, 365; *Armour & Co.* v. *North Dakota*, 240 U. S. 510, 513. See *Moore* v. *Minneapolis*, 43 Minnesota, 418; *Price* v. *People*, 193 Illinois, 114; *Armstrong* v. *Warden*, 183 N. Y. 223. In its general scope and so far as now

sought to be enforced against plaintiff in error the act in question infringes no provision of the Federal Constitution. The charge relates only to the plainly mischievous action denounced by § 6. Provisions of § 5 in respect of fees to be demanded or retained are severable from other portions of the act and, we think, might be eliminated without destroying it. Their validity was not passed upon by the Supreme Court of the State and has not been considered by us.

The judgment of the court below is

Affirmed.